TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 453

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW YORK, PLAINTIFF IN ERROR

vs.

BURNETT WILLIAMSON

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK

(18,248.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No 395.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW YORK, PLAINTIFF IN ERROR,

vs.

BRIGHT WILLIAMSON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

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a Supreme Court of South Carolina, Spring Term, 3d Tuesday in April; Fall Term, 4th Tuesday in November.

Henry McIver, chief justice, Cheraw, S. C.
Y. J. Pope, associate justice, Newberry, S. C.
Eugene B. Gary, associate justice, Abbeville, S. C.
Ira B. Jones, associate justice, Lancaster, S. C.
U. R. Brooks, clerk.

COLUMBIA, S. C., *Aug.* —, —.

I, U. R. Brooks, clerk of the supreme court of South Carolina, do hereby certify this to be a true, full and complete copy of the record of the case of Bright Williamson, plaintiff, respondent, against Eastern Building & Loan Association of Syracuse, N. Y., defendant, appellant, which is now on file in my office, and I do further certify that the opinion rendered by the court in said case is a part of the record of said case.

"I do further certify that the original writ of error granted by Mr. Justice Rufus W. Peckham, associate justice of the Supreme Court of the United States, on the 29th day of July, 1901, a copy of which is now on file in my office and the assignment of errors thereon, and the original citation, a copy of the supersedeas bond, the original being now on file in my office are hereto attached."

"Given under my hand and the seal of the supreme court of South Carolina, at Columbia, this 8th day of August, in the year of our Lord one thousand nine hundred and one and in the one hundred and twenty-fifth year of the Independence of the United States of America."

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

1 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, November Term, 1900, Fourth Circuit, Darlington County.

BRIGHT WILLIAMSON, Plaintiff,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Appellant.

Case.

This action was commenced on the 12th of January, 1898, for the purpose of recovering the sum of $1,562.50 which was alleged to be due the plaintiff on 25 shares of stock of said defendant association, evidenced by certificates No. 4989 for 10 shares and 4990 for 15 shares, which was heard before his honor, Judge James C. Klugh, and a jury at the March term of court for Darlington county.

BOYD & BROWN,
For Plaintiff, Respondent.
T. H. SPAIN,
For Defendant, Appellant.

Complaint.

STATE OF SOUTH CAROLINA, }
County of Darlington. }

2 BRIGHT WILLIAMSON, Plaintiff,
against
EASTERN BUILDING & LOAN ASSOCIATION OF SYRACUSE, N. Y., Defendant.

Bright Williamson, plaintiff, complaining of The Eastern Building & Loan Association, of Syracuse, New York, defendant, alleges:

I. That the plaintiff resides at Darlington Court-house, in the State of South Carolina, and is a citizen of the said State.

II. That the defendant is now, and was at the times hereinafter mentioned, a corporation duly organized and chartered under the laws of the State of New York. That at some date prior to the times hereinafter mentioned, the defendant entered and commenced carrying on business in this State, and for this purpose, and in accordance with the laws of this State, appointed and kept a resident agent in this State on whom legal process might be served so as to bind the defendant, and service of process upon said agent should be sufficient to give jurisdiction to the court issuing the same in any county in this State.

That the present resident agent of the said defendant in this State is T. H. Spain, Esq., who resides at Darlington Court-house, in said State, and that the defendant has property in this State.

III. That the defendant has, since locating in this State, been doing a building and loan business, and has been selling stock to be matured on the instalment plan, by making monthly payments as provided in its certificate of stock and its by-laws.

IV. That heretofore on the — day of February, 1891, the plaintiff having made application for, subscribed for, and received
3 twenty-five shares of stock of said defendant's association, evidenced by certificates numbers 4989 for ten shares, and 4990 for fifteen shares. That the contract between the plaintiff and the defendant was expressed by the said application which was in writing, by the said certificates of shares, and by the then terms, conditions and by-laws of the defendant's association printed on the front and back of said certificates. That by the proper construction of the said contract, evidenced by said papers, copies of which are not attached as exhibits to the complaint because the originals are in possession of the defendant, plaintiff was to pay membership fee of one dollar per share, and thereafter seventy-five cents per share, or the sum of eighteen and $\frac{18}{100}$ dollars monthly for the period of seventy-eight months, and upon so doing, defendant was to pay to plaintiff at the expiration of the said seventy-eight months and within sixty days after the acceptance and approval of satisfactory proofs of all payments, the sum of one hundred dollars for each of said shares. That by the said contract the time of maturity of the

said shares was rendered definite, and the payment of the said one hundred dollars per share upon the said monthly payments being duly made was fixed and contingent upon no circumstances. That this construction of the contract before plaintiff made said application for said shares and received the same was represented to plaintiff by said defendant, through its agents and its literature as its true and proper construction and upon this representation, relying upon the same, and induced by the same, plaintiff signed the said application, received the said certificates and made payments as required. That the plaintiff paid the membership fees aforesaid, and for the full term of seventy-eight months, paid to the defendant each month the sum of eighteen and $\frac{75}{100}$ dollars.

V. That it was provided in the by-laws of defendant's association that loans might be made upon shares in good standing, except what was called fully paid Class A stock to an amount not exceeding ninety per cent. of the stock payments, or monthly dues paid thereon upon such shares as collateral security, and upon such bond, note or other obligation, or instrument as the board of directors might require.

That in accordance with this provision, on or about April 19th, 1895, plaintiff borrowed of the defendant on his said shares of stock the sum of nine hundred and thirty-seven and $\frac{50}{100}$ dollars, giving his note or obligation therefor, and assigning to the said defendant as collateral security, his said twenty-five shares of stock. That the said contract of loan was made with the express understanding that plaintiff should pay interest on the same, the sum of six and $\frac{25}{100}$ dollars each month, the same being monthly interest at the rate of eight per cent. per annum until the expiration of the said seventy-eight months, when, as aforesaid, the said twenty-five shares would mature, and would be worth each one hundred dollars, and the said loan would then be cancelled and paid up by deduction from twenty-five hundred dollars, the value at that time of the said shares, and the balance, to wit, $1,562.50, would be due and payable on demand to the plaintiff.

VI. That the plaintiff paid as aforesaid the monthly dues on his said twenty-five shares of stock promptly as the same became due, for the full period of the said seventy-eight months, and also the sum of six and $\frac{25}{100}$ dollars monthly interest as aforesaid on said loan until the expiration of the said period of seventy-eight months, and then on October 29th, 1897, gave notice to the defendant in writing of his withdrawal from membership of the defendant's said association, and did withdraw from the same, and at the same time furnished the proofs required as aforesaid, and made demand for the payment of the said sum of fifteen hundred and sixty-two and $\frac{50}{100}$ dollars then due him in payment of his said shares, after deduction of the said loan, but the defendant denied its liability and refused to pay the same, and though sixty days have elapsed since the said notice of withdrawal and demand for payment were given and made upon the defendant, it has refused to pay to plaintiff the said sum of fifteen hundred and sixty-two and $\frac{50}{100}$ dollars, and is now justly due and owing to the plain-

tiff the said amount and interest on the same from the 29th day of December, 1897.

Wherefore the plaintiff prays judgment against the defendant for the sum of fifteen hundred and sixty-two and $\frac{50}{100}$ dollars and interest as aforesaid, and for the costs of this action.

BOYD & BROWN,
Plaintiff's Attorneys.

Verified.

Answer.

STATE OF SOUTH CAROLINA, }
County of Darlington. }

Court of Common Pleas.

BRIGHT WILLIAMSON, Plaintiff,
against
THE EASTERN BUILDING & LOAN ASSOCIATION OF SYRACUSE, N. Y., Defendant.

The defendant, The Eastern Building & Loan Association of Syracuse, N. Y., answering the plaintiff's complaint herein:

I. Admits that the plaintiff resides at Darlington Court-house, in the State of South Carolina, and is a citizen of the said State; that the defendant is now and was at the time mentioned in the complaint herein, a corporation duly organized and chartered
6 under the laws of the State of New York; that in accordance with the laws of the State of South Carolina, the defendant has appointed and kept a resident agent therein on whom legal process might be served so as to bind the defendant, and that the present resident agent of the defendant in this State is T. H. Spain, Esq., who resides at Darlington Court-house, in said State; that during the time mentioned in the complaint herein, the defendant has been issuing stock to be matured on the installment plan by monthly payments thereon; that in February, 1891, the plaintiff made application for, subscribed for and received twenty-five shares of stock of the defendant association, evidenced by certificates Nos. 4989 for ten shares and 4990 for fifteen shares; that the membership fee on said shares was one dollar per share, and the monthly dues thereon seventy-five cents per share or the sum of $18.75; that the plaintiff paid said membership fee, and for seventy-eight months paid each month the said monthly dues of $18.75; that it was provided in the by-laws of defendant association that loans might be made upon shares in good standing, except fully paid Class A stock, to an amount not exceeding 90 per cent. of the stock payments or monthly dues paid thereon upon such shares, as collateral security and upon such bond, note or other obligation or obligations or instrument as the board of directors might require, and that in accordance with this provision on or about April 1, 1895, plaintiff borrowed of defendant on his said shares of stock the sum of nine hundred and thirty-seven and fifty one-hundredths dollars, giving his note of obligation therefor and assigning to the

defendant as collateral security his said twenty-five shares of stock; that the monthly payment on said loan is the sum of $6.25, and that the plaintiff has paid the monthly payment of $6.25 on said loan down to and including the month of July, 1897; that on or about October 29, 1897, plaintiff gave notice to the defend-
7 ant of withdrawal and demanded payment of fifteen hundred and sixty-two and fifty one-hundredths dollars claimed to be due him on account of such shares after deducting said loan; that the defendant still refuses to pay the same; and that it has in its possession the aforesaid shares and application therefor.

II. And each and every other allegation in said complaint contained, not hereinbefore expressly admitted, this defendant denies.

III. And for a further answer and defense the defendant alleges that it was duly incorporated on or about March 1, 1890, under chapter 122 of the Laws of 1851 of the State of New York, and of the acts amendatory thereof and supplementary thereto; that subsequently and on or about February 2, 1891, the plaintiff duly applied in writing to the defendant at its home office in the city of Syracuse, N. Y., for twenty-five shares of its instalment stock and agreed thereby to abide by all the terms, conditions and by-laws contained or referred to in the certificates of shares, and also to comply with all the rules and regulations of said association; that on or about said date, defendant accepted said application and issued to the plaintiff its two several certificates for twenty-five shares, Nos. 4989 and 4990, as aforesaid and forwarded the said certificates from its home office to the plaintiff; that said certificates certified, among other things, that the plaintiff was constituted a shareholder in defendant corporation in consideration of the payment of the membership fee, together with the agreements and statements contained in the application for membership, and full compliance with the terms, conditions and by-laws printed on said certificates, which were, by the expressed terms of said certificates, referred to and made a part thereof; that in and by the said certificates all payments there-
8 under were payable at the home office of the defendant corporation at Syracuse, N. Y.; that the sum of one hundred dollars for each of the shares represented by said certificates was payable by the defendant to the plaintiff, his executors, administrators or assigns, at the end of seventy-eight months from the date thereof, only in the manner and upon the conditions set forth in the defendant's articles of incorporation and by-laws, and the terms and conditions printed on said certificates, and that at no time did defendant make or enter into any contract with the plaintiff other or different than the one so alleged as aforesaid; that under said law, under which defendant is incorporated and the articles of incorporation and by-laws of defendant, the defendant is a mutual institution in which all of the members thereof must, according to their respective holdings, share equally in the losses and profits, and that the defendant has no means of maturing its shares except by the contributions of its members on their shares and *and* the earnings thereon, and that the rights of the plaintiff are not superior to that of any other member in the amount that he is entitled to receive

under said shares or in the manner of the payment thereof, and that his rights under said shares are determined in connection with the law under which the defendant is incorporated and its articles of incorporation and by-laws and the due and legal amendments thereof; that although seventy-eight months have elapsed from the date of said certificates, nevertheless the conditions set forth in defendant's articles of incorporation and by-laws, and the terms and conditions printed on said certificates have not been complied with by plaintiff, and that the plaintiff has failed to perform all of the obligations, agreements and conditions on his part required to be performed, and that said contract on his part has not in all respects been fully kept and performed.

IV. For a further answer the defendant alleges that after the expiration of seventy-eight months from the date of said certifi-
9 cates, and prior to the commencement of this action, plaintiff demanded payment to him by defendant of the sum of twenty-five hundred dollars, maturity value of said shares, less the sum of nine hundred and thirty-seven and fifty one-hundredths dollars, principal moneys loaned on said shares, but that said demand was not made in accordance with the terms of contract between plaintiff and defendant; that the defendant refused to pay the same, and that its refusal to pay was upon the ground, in addition to those alleged in other paragraphs of this answer, that said shares of stock represented by said certificates Nos. 4989 and 4990, had not matured and were not worth the sum of one hundred dollars per share; and the defendant further alleges that said shares of stock have not yet matured and are not yet worth one hundred dollars per share; that the affairs of the defendant have been wisely and prudently administered, but that owing to the widespread financial depression of recent years the earnings of the defendant have been greatly reduced; that said shares did not on October 29, 1897, nor at any time since, exceed in value the sum of fifteen hundred sixty and seventy-five one-hundredths dollars, which said sum represents that total amount paid in on said shares together with their full proportion of all earnings made by defendant.

V. And the defendant further alleges that heretofore and on or about the first day of April, 1895, the defendant, at its home office in the city of Syracuse, N. Y., and pursuant to the provisions of its articles of incorporation, by-laws, rules and regulations, which the said plaintiff then and there covenanted and agreed to comply with, made an advance or loan of nine hundred and thirty-seven and fifty one-hundredths dollars on the security of the dues paid in on said shares, which said loan, by an instrument in writing duly executed and delivered to said association at its home office, the
10 said plaintiff covenanted and agreed to pay at or before the maturity of said shares at its home office in the city of Syracuse, N. Y., together with interest and premium at the rate of $6.25 per month until the maturity of said shares, or until said principal sum was fully paid, and at the same time transferred and delivered to the defendant said certificates of shares as collateral security on said loan; that no part of the principal sum of said loan has been

paid, tendered or offered to be paid by the plaintiff to this defendant in accordance with the provisions of his said agreement, and that no interest or premium thereon have been paid since the month of July, 1897, and that there is now justly due and owing to this defendant on account of said loan, the sum of $937.50, with interest and premium thereon at the rate of $6.25 per month from and including August 1, 1897, together with the fines at the rate of twenty cents per share per month since and including said month of August, 1897; that under and by virtue of the articles of incorporation of the defendant, shares may be withdrawn before maturity, provided the same are not pledged and are in good standing, and all dues and fines have been paid to date; that by virtue of said loan and the non-payment thereof, said shares are still pledged and the plaintiff has no right to demand the withdrawal thereof.

VI. For a further answer defendant alleges that the plaintiff is not entitled to recover any sum whatever in this action, for the reason that by the terms of the contract existing between plaintiff and defendant, defendant is not required to pay out to maturing stock, or stock entitled to withdrawal, more than one-half the amount received by the defendant for dues and stock payments in any month; that all payments thereof are required to be made in the order of the application for withdrawal; that prior to plaintiff's alleged application for withdrawal on October 29, 1897, a large number of certificates had been filed for withdrawal by other members, which last-mentioned certificates have
11 been and are still being paid in the order in which they were filed, and that the certificates so filed by plaintiff for withdrawal as aforesaid, although the plaintiff had no right to file the same, had not at the time of the commencement of this action, been reached in their regular order for payment; that at the time of the commencement of this action the amount of withdrawing or matured, or alleged matured, stock filed with the defendant for payment, greatly exceeded the amount of money applicable to such payment, and since then and still does greatly exceed such amount; that at the time of the alleged demand for payment made by plaintiff of defendant, and at the time of the commencement of this action, there were no funds in the hands of the defendant applicable, under the terms of its articles of incorporation and by-laws, to the payment of plaintiff's alleged claim, and that there have not been since and are not now any funds so applicable.

Wherefore, the defendant prays judgment dismissing the plaintiff's complaint herein and for costs of this action.

T. H. SPAIN,
Defendant's Attorney.

Verified.

Reply.

STATE OF SOUTH CAROLINA,
County of Darlington.

Court of Common Pleas.

BRIGHT WILLIAMSON, Plaintiff,
against
EASTERN BUILDING & LOAN ASSOCIATION OF SYRACUSE, N. Y., Defendant.

The plaintiff, Bright Williamson, replying to so much of
12 the allegations of paragraph 5 of defendant's answer as he is advised that it is proper or necessary for him to make answer to, says that he denies that he is indebted to the defendant as alleged in the sum of nine hundred and thirty-seven and $\frac{50}{100}$ dollars, with interest and premium thereon at the rate of six and $\frac{25}{100}$ dollars per month from and including August 1st, 1897, together with the fines at the rate of 20 cents per share per month since and including said month of August, 1897. That it is true that he borrowed from the defendant the sum of nine hundred and thirty-seven and $\frac{50}{100}$ dollars on or about the first day of April, 1895, on the security of the dues that he had paid on his shares of stock in defendant's association, but that on and after August 1st, 1897, the defendant being indebted to the plaintiff in an amount much larger than the said loan in accordance with the understanding and agreement between plaintiff and defendant the said sum of nine hundred and thirty-seven and $\frac{50}{100}$ dollars was deducted from the amount belonging to plaintiff in defendant's hands, and was fully paid and satisfied. That he denies each and every the allegations in said paragraph contained inconsistent with the allegations of this his reply thereto.

BOYD & BROWN,
Plaintiff's Attorneys.

Verified.

Plaintiff's Testimony.

Heard spring term, 1900, before Judge Klugh and a jury.

The following testimony was heard:

Plaintiff introduced application for 25 shares in defendant corporation; No. 4989, for 10 shares, and No. 4990, for 15 shares. Ex. "A."

Plaintiff introduces two certificates of shares, Nos. 4989 and 4990, in defendant corporation. Ex. "B."

13 Plaintiff offers to introduce record in the supreme court, November term, 1898, entitled Bright Williamson appellant, *vs.* Eastern Building & Loan Association, of Syracuse, New York, respondent.

Defendant objects on the ground that that case is nothing more

nor less than a motion to vacate an attachment which Judge Gary vacated, and the exhibits in the case are irrelevant.

Objection overruled. Exception noted.

The brief in the case was then introduced.

J. J. WARD testified:

Direct examination:

Q. Were you living in Darlington in January and February, 1891?

A. Yes, sir.

Q. Did you at that time become a member of the local board of the Eastern Building & Loan Association?

A. Yes, sir.

Q. Who organized the local board at this place?

A. Carpenter. A man by the name of Carpenter—Samuel Carpenter, I believe his name was.

Q. Did Mr. Carpenter have any authority from the association to represent the association and establish local boards?

A. He did.

Q. Did you have any occasion to inquire as to the extent and right of Mr. Carpenter to act for the association?

A. Yes, sir; I inquired by telegram to the association.

Q. What reply did you get?

Objected to.

Q. Did you get a reply?

A. Yes, sir.

Q. What became of the reply?

A. Mr. Samuel Carpenter took it.

Q. How did that happen?

A. I wired to the association to know the extent of Mr. Carpenter's authority, to know if he was recognized by the association to transact business for them here as their agent and they wired back to me.

Q. Mr. Carpenter took the telegram?

14 A. Mr. Carpenter came into my office. I had the telegram on my table that I had received from the association, and without any invitation on my part, Mr. Carpenter read the telegram and asked me to give it to him, which I did. He said he wanted to use it.

Q. What has become of Mr. Carpenter?

A. I have not heard from him in several years.

Q. What were the contents of the telegram?

Defendant objects on the ground that no notice had been served on the defendant to produce the telegram.

The COURT: If he establishes the loss of the telegram, if it is lost, so far as this plaintiff is concerned it seems to me he is entitled to give the contents.

Exception noted by the defendant.

Q. State what the telegram contained.

A. The telegram fully recognized Samuel Carpenter as the agent of the Eastern Building & Loan Association and saying to me and to any others that wished to deal with him that they dealt with him safely, that he was their authorized agent to transact all business for them. It was a very full recognition of Mr. Carpenter's authority to transact all business for the Eastern Building & Loan Association—so full that Mr. Carpenter desired the telegram to show to others that he wanted to transact business with for the association. He asked me for it and I gave it to him. He used it for that purpose.

Q. Did Mr. Carpenter at that time have any literature of the association?

A. Yes, sir.

Q. Did he circulate the same in this community?

A. Yes, sir; he did.

Q. What was the character of the literature?

A. It was little pamphlets, little brieflets, setting forth the character of the association and the inducements for the parties to go into the association. There were the strongest inducements held out in the literature; and the fact that it was an association making a definite contract and definite plan—that was the literature, and those were Mr. Carpenter's representations.

Defendant's counsel moves to strike out all of the testimony of witness as to what was contained in the literature on the ground that any literature which the plaintiff offers to introduce must be proven first to be the literature of the association and actually used by them.

The COURT: If they prove that the duly authorized agent—the soliciting agent of the association—used literature which he declared to be the literature of the association, and that this plaintiff was induced to act by those representations of the agent, I think it is competent if they produce those brieflets and other matters that Mr. Ward refers to as having been used by Samuel Carpenter in this town in soliciting the membership of this plaintiff.

Exception noted by defendant.

Q. Look at this card (exhibits card to witness) and say if it is part of the literature used by Samuel Carpenter.

A. Yes; part of it.

Q. Read it.

A. "Eastern Building and Loan Association of Syracuse, N. Y.

America's leading building association.

Par value of shares $100 each. Organized under the laws of New York.

Officers and directors.

H. H. Loomis, president.

D. H. Murray, vice-president.

John J. W. Reynolds, secretary and general manager.

Lucius M. Kinne, treasurer.

W. H. Emery, assistant secretary.

M. H. Bunn, assistant general manager.

Charles A. Pooler, superintendent of agencies.

Alex. H. Hubbs, manager loan department.
A. B. Kinne, director.
16 D. A. Pierce, attorney.

For the investor.

This association issues three classes of certificates, designated as instalment, paid-up and fully paid. All of which are guaranteed to mature in 6½ years.
Amply secured by first mortgages on real estate.
Paid-up stock doubles in 6½ years.
Fully paid certificates guaranteed.
Quarterly dividends, 7 per cent. per annum.

For the borrower.

This association has no auction sales.
No bidding for loans.
And a definite time for repaying a loan.

Assets.

March 15th, 1892.

Cash in depository	$10,432.27
Loans on bond and mortgage	354,050.00
Loans on stock	1,422.28
Real estate	946.73
Furniture and fixtures	2,203.79
Instalments due and unpaid	12,512.90
*Interest " "	912.15
*Premiums " "	912.15
*Fines " "	4,880.72

*Much of this in hands of bonded collectors and in transit March 15th.

Shares issued.

Instalment stock	$61,920
Paid up	1,531
Fully paid	332
	$63,783

Liabilities.

March 15th, 1892.

Due shareholders on instalment stock	$204,179.80
17 " " " paid-up stock	62,001.00
" " " fully paid stock	29,280.00
Advanced instalments	3,763.50
" interest	149.68
" premium	149.68
Profits due shareholders	57,005.54
Due on instalment loans	29,540.00
Surplus	2,203.79
	$388,272.99

Assets March 15th, 1891	$102,416.02
" " " 1892	388,272.99
Profits and surplus March 15th, 1891	12,820.46
" " " " " 1892	59,209.33

The only association making a definite contract in every particular.

Withdrawal value clearly stated, and never less than the amount paid in instalments.

Stock matures in 78 months.

Borrowers know the exact amount required to cancel their mortgage.

No auction system. No lapses. No forfeitures.

No loans made on farm property, churches, schools, summer hotels or resorts, mills, factories or any property designed for other than general purposes.

For full particulars,

To subscribe for shares,

Apply to

L. S. WELLING,
Darlington, S. C."

Q. Look at that. (Exhibits paper.) Was that circulated by Carpenter?

A. It was.

Plaintiff introduces folder with head-line: "Only association giving investor and borrower definite maturity contract in 78 months. Only association issuing definite contracts."

18

Q. Did Mr. Carpenter establish a local board here?

A. Yes, sir.

Q. Were you a member of it?

A. Yes, sir.

Q. Did you purchase shares in the corporation?

A. Yes, I purchased shares at the same time that Mr. Williamson did. We were together when we agreed with Carpenter.

Q. When entering upon this contract what did you rely upon?

A. I relied upon the literature of the association as exhibited by Mr. Carpenter, entirely so. My recollection was when we took this stock that we never saw any by-laws of the association until the stock was sent to us, but when we subscribed for this stock we relied on this literature and the representations of Mr. Carpenter and the representations of the association that Mr. Carpenter was their agent.

Q. Did Mr. Carpenter make representations to you and to Mr. Williamson of similar character as that contained in these circulars?

A. No, sir; my recollection is that he strictly confined himself to what was contained in the printed literature.

Q. Did he make statements in accordance with that published in the literature?

A. Yes, sir.

Cross-examination by Mr. SPAIN:

Q. You are a member of the Eastern Building & Loan Association?
A. I was a member.
Q. You procured a loan?
A. Yes, sir.
Q. A mortgage given?
A. Yes, sir.
Q. You have not paid all the 78 notes?
A. No, sir.
Q. That mortgage is now being foreclosed in this court?
A. Yes, my reason for not paying them is that they demanded more than 78 payments.
Q. You have had a good deal of experience in stocks and bonds and so forth?
A. Yes, sir.
19 Q. You know what the par value of stock means?
A. Yes, sir.
Q. Out of what are the dividends paid?
A. Out of the earnings of the association or company, whatever it is.

BRIGHT WILLIAMSON testified:

Direct examination:

Q. You are the plaintiff in this action?
A. Yes, sir.
Q. What is your employment?
A. I am president of the Bank of Darlington.
Q. You contracted with the Eastern Building & Loan Association, as it is stated here, in February, 1891, for 25 shares of their stock. With whom was the business negotiated between you and the association?
A. Mr. Samuel Carpenter.
Q. The application that has been introduced here in evidence of the shares of stock is on a blank, from whom did you get that blank?
A. Mr. Samuel Carpenter.
Q. How came you to subscribe for stock?
A. Mr. Carpenter came here and claimed that he represented the Eastern Building & Loan Association of Syracuse, New York, and solicited subscriptions to the stock, and it was through him and his representations that I subscribed.
Q. If you had any assurances that he had authority to represent the association, please state it.
A. He had letters from the association, and he had various literature of the association, and before the stock was actually subscribed Mr. Ward wired parties asking for information in regard to Mr. Carpenter and his authority, and on the strength of the telegrams

which he received in answer to his telegram, together with representations, letters and so forth——

Q. (Interruption.) Did you see the reply to his telegram?

A. Yes, sir.

Q. Was it as Mr. Ward stated?

A. Yes, sir, my recollection of the telegram is that it was
20 in substance just what Mr. Ward has stated. It was perfectly satisfactory.

Q. Was there any letter shown by Mr. Carpenter?

A. Yes, sir.

Q. What was the character of the letter?

Defendant objects.

The COURT: First of all, show where it purported to come from.

A. From Syracuse, from the association which he represented. It was a short introduction.

Q. An introductory letter?

A. Yes, sir.

Defendant objects to statement of contents of letter.

The COURT: I think it is competent for this plaintiff to show the representations made by that agent within the scope of the authority which he purported to have, or which the association represented him to have by this telegram.

Exception noted.

Q. State what the letter was.

A. A short introduction to Mr. Carpenter, saying that he represented them as an agent, in the capacity in which he did.

Q. Go on and state how you came to apply for these shares.

A. On the strength of the statements made by Mr. Carpenter and the statements contained in the literature which he had.

Q. What literature was it that you saw?

A. It was literature stating that the association (and he stated the same over and over again himself) that the association was not like all other associations with estimated periods of maturity, but that this association was the only one guaranteeing a definite contract. From the representations I just thought it was a good investment.

Q. Look at these exhibits and see if the literature he showed you was of the same class as these?

A. The literature which he had was similar to this in its statements and endorsements of the association. The literature
21 he had was similar to this, endorsing the association and the statements connected with it as to what they would do.

Q. Have you read over that card prospectus that you had in your hand just now, and are you familiar with what it said?

A. Yes, sir.

Q. Now the literature that you received from Mr. Carpenter, which you read and relied upon before you entered upon this contract, did it contain the same statements as are contained in this I have shown you?

A. Yes, sir.

Q. Were you at that time acquainted with the laws of New York as to building & loan associations?

A. No, sir.

Q. Had you seen anything of the articles of association —. — recollect ever to have seen them until I got my certificate of stock.

Q. I am speaking of the articles of incorporation?

A. No, sir; I never had seen them.

Q. Were you acquainted with the by-laws of the concern before you made application for shares?

A. Only as incorporated in their literature that I saw, and the representations of Mr. Carpenter.

Q. When was it that you first saw the by-laws of the association?

A. When I got my certificate of stock they were printed on the back.

Q. Under that contract you promised to make certain monthly payments for 78 months, did you make those payments?

A. I made them.

Q. Now it is alleged that you borrowed afterwards upon your shares, state about that.

A. In March, 1895, I believe it was, Mr. Pooler came here.

Q. Who was Mr. Pooler?

Objected to.

A. I have met Mr. Pooler in the offices of the association. Mr. Pooler, Mr. Dunn and Mr. Reynolds and others, right in their offices.

22 Q. What office did he hold in the association?

A. He held the office of secretary.

Q. You were going on to say that he was here.

A. He was here with Mr. Carpenter in 1895, in the spring of 1895, and he offered to make me a loan on my certificates of stock equal to the amount I had paid in, at 8 per cent. per annum, interest payable monthly, and he agreed to take the certificates of stock—an assignment of the certificates of stock as collateral security; and that by so doing that I would be borrowing from the association just as if I was borrowing from a bank, and that it would not alter my status as a shareholder. This I received from statements he made to me in conversations I had with him here in Darlington; and to confirm this I wrote to him and stated that that was my understanding when I made the loan, or it was subsequent to that I wrote to him and told him that that was my understanding. He wrote me a letter which I have confirming it as I understand it. He referred in his letter to his conversations here in Darlington as part of the understanding as agreed on.

Q. Look at that and say if that is the letter you speak of? Is this the letter you received from Mr. Pooler?

(Exhibits letter to witness.)

A. Yes, I received that letter.

Q. Is this a copy of the letter you wrote to him to which the one you have just looked at is a reply?

(Exhibits letter.)

A. It is.

Plaintiff then introduces the following letters:

DARLINGTON, S. C., *April* 16, 1895.

C. A. Pooler, general manager, Syracuse, New York.

DEAR SIR: Your favor of the — inst. received, and the blank of application and contract for loan of $937.50, which I wish you to make at once and forward to me, exchange for same. As
23 I understand this contract, I may pay up the principal sum at any time, and the monthly payments of $6.25 will then be discontinued, and my stock will be just as it is now to me. If you desire it, as I told you, I will make a change in my stock and take paid-up stock or some other kind.

Yours truly, BRIGHT WILLIAMSON.

Syracuse, N. Y., April 19th, 1895.

(Dictated by C. A. P.)

Mr. Bright Williamson, Darlington, S. C.

DEAR SIR: Your esteemed favor of the 16th inst. came duly to hand. I hasten to enclose you herewith our check on New York in the sum of $937.50, as loaned on your stock. Your understanding is correct with reference to the payment of principal and discontinuance thereafter of interest upon the loan.

As I desire this to catch the first Eastern mail, must necessarily be brief. With sincerest regards,

Yours very truly, C. A. POOLER, *G. M.*

Q. In the year 1897 did you receive any letter from Mr. Pooler—any other letter with reference to this loan?

A. Yes, sir.

Plaintiff introduces the following letter:

Eastern Building and Loan Association.

SYRACUSE, N. Y., *March* 27, 1896.

Sec'y dept.

Dictated by A. J. W.

Mr. Bright Williamson, Darlington, S. C.

DEAR SIR: In reply to your favor of the 21st inst. I beg to
24 say that the fact of your borrowing on your stock does not in any way affect the value of the same. Your certificate distinctly states that in case your stock is withdrawn that you are only entitled to the payment of the loan fund. If you carry your

stock to the 78 months you will receive the full amount paid in, together with the interest of not less than 8 per cent.

Yours truly, THOMAS A. J. WHITTON, *Secretary.*

Q. Did you receive this letter of February 11th, 1896, from T. A. J. Whitton?

A. Yes, sir.

Plaintiff introduces the following letter:

Eastern Building and Loan Association.

SYRACUSE, N. Y., *February 11th*, 1896.

Sec'y dept.

Dictated by A. J. W.

Mr. Bright Williamson, Darlington, S. C.

DEAR SIR: In reply to your favor of the 5th inst. I now beg to enclose you a statement showing a balance of $297.88 in your favor. Kindly sign the enclosed receipt, have it witnessed and dated, and return to this office and check for the same will be sent to you.

Yours truly, A. J. WHITTON.

Enc. D.

Plaintiff introduces the following statement:

Statement.

SYRACUSE, N. Y., *February 11th*, 1896.

Bright Williamson, Darlington, S. C., in account with Eastern Building and Loan Association of Syracuse, N. Y.

25	To stock loan, 269	$937 50	
	Feb'y int	6 25	
			$943 75

CONTRA.

By withdrawal val. cert. 4989, 4990, 25 shares, 6 months	$1,163 50	
Rebate premium	78 13	
		1,241 63
Balance due him		$297 88

(E. & O. E.)

Q. Have you any literature of the association showing their interpretation of the law as to the payment of your borrowed sum?

A. Yes, sir.

Q. What is that you have in your hand?

A. This is the fourth annual statement of the Eastern Building and Loan Association of Syracuse, New York.

Q. How did you get that?

A. I have every one of their annual statements. Some of them were brought here by Mr. Carpenter. I got them regularly through the mails.

Q. Sent to you as a member of the association?

A. I have every one of them.

Q. The same way you got the letters?

A. Yes, through the mail.

Defendant objects to the introduction of this literature on the ground that there has been no proof that it is authentic.

Objection overruled. Exception noted.

Plaintiff introduces the fourth annual statement of the Eastern Building and Loan Association of Syracuse, New York, marked Exhibit "K," and witness reads the following extracts therefrom:

"Stock loans.

A member may obtain a loan on his shares upon the same terms regarding interest and premium that apply in the case of loans upon real estate, by pledging his shares to the association as collateral security, he can borrow an amount not to exceed 90 per cent.
26 of the payments made thereon. Members not owning real estate find this a convenient and quick method of obtaining a temporary loan, with the privilege of repaying the same at any time, or if continued until the stock matures the amount of the loan would be deducted from the maturity value thereof.

No legal fees are charged upon this class of loans."

Q. It is stated that it was absurd on its face for you to have supposed that the association could carry out a definite contract and pay par at 78 months, what have you to say to that.

A. If they made the contracts which they said they did with the borrowers and they were carried out, then those contracts ought to mature the stock in 78 months. Mr. Carpenter had a statement with him of the calculations and he made it for me and for others—made it more than once—showing that it could be done. I made a rough calculation of it and it looked to me as possible. The interest was compounded monthly, and it was a pretty good rate of interest they were getting which compounded monthly. At that rate and deducting reasonable expenses it ought to have matured the stock. There is no question about their saying they could do it. They had a statement showing that they could do so; and their literature all said they could do it, and that there was no question about it. Mr. W. C. Coker took some stock in it and he made a calculation on the subject.

—. Did you see the calculation made by Capt. W. C. Coker?

A. I didn't see the calculation, but it is a fact that can be mathematically demonstrated that money loaned at 10 per cent. interest, and payable annually—not monthly—will double itself in 7 years and $\frac{27}{100}$th- of a year; that is, 7 years and 3 months. That is, a whole sum loaned at 10 per cent. compounded annually. This was for a greater rate than 10 per cent. and compounded monthly.

Q. You did not consider it unreasonable?

A. No, sir; not if they made the loans that they said they did.

27 Q. You know that the association did make earnings sufficient to carry out that contract?

A. I have their statement that they did.

Q. Read it.

A. "In its first 22 months it accumulated a surplus of $1,890.78 over and above the earnings necessary to mature stock in 6½ years."

Q. What do you read from?

A. This is from a leaflet they sent out from the annual report for the year ending 1891. That was some time after I had taken my stock.

Plaintiff introduces "Copy sworn report made to State banking department, January 4, 1892."

Q. What was the amount they made over and above what was necessary to fulfill their engagements.

A. $1,890.78. They were gaining more than enough to mature stock. They were getting a surplus.

Q. What next?

A. I have all of their annual reports. I have one March 15th, 1892, a statement sent out—the second annual report of the association. It states there that the surplus was $2,203.79, over and above enough to mature this definite stock in 78 months—that is at $100 per share.

Plaintiff introduces "Second annual statement of the Eastern Building and Loan Association of Syracuse, N. Y., at close of business March 15th, 1892."

Q. What next?

A. Their third annual statement has this comment in it, made by the president, Henry H. Loomis: "After several meetings it was agreed by all that the plan which has since become known as 'the definite contract plan' of the Eastern was best for their adoption. I think I speak the sentiment of the charter members as well as the thousands of others who are interested, that this decision was wise. And that the plan and system was thoroughly matured before its adoption is evidenced by the fact that there has occurred no necessity for a change in any particular, and that under it the officers,

28 assistants and agents have made an unparalleled success for the borrower and investor alike."

And in another paragraph is this: "The past year has been a very successful one for the Eastern. Notwithstanding the marvelous progress of the first fourteen months and the great stride during the next twelve, yet the twelve months just passed have been more productive in results than the first twenty-six, thus giving us added assurance for the future of the association."

Then in the same annual statement, on page 13, in the report of Mr. Reynolds, secretary and general manager, I find this: "Our profits are largely made up of compound interest. Lapse of time and constant reinvestment of the income is all the advantage there

is in compound over simple interest, although the idea has somehow got abroad that compound interest is a mysterious and unexplainable something, which, like leaven in the meal, increases the bulk in some occult manner and that time has but little importance in the transaction."

Plaintiff introduces "Third annual statement of the Eastern, March 15th, 1893."

Q. What next?

A. This is from the president's address in the fourth annual statement: "In welcoming you once more I cannot refrain from pointing with both pleasure and pride to the progress which the Eastern has made and to the great difficulties which it has surmounted during the last twelve months."

In the same annual statement we find this language: "The capital stock of the association is divided into shares of one hundred dollars each, par value at maturity."

Plaintiff introduces fourth annual statement of the Eastern Building and Loan Association of Syracuse, N. Y.

Q. What next?

A. The next report is the fifth annual report. In the president's address he says: "And I believe that you will concur with
29 me in the statement that the Eastern has made a record of which we may all be proud; that her vast interests have been solidified, centralized, as well as enlarged, during the past year; that she has past experimental stages and has reached a plane from which she can regard the future with complacency."

In the same report the manager of the loan department says: "I find by comparing the present condition of payments with that of March 15th, 1894, the date of the report which I had the honor of submitting at our last annual meeting, that there is a decided improvement."

From the president's report in the sixth annual statement I read this: "This institution has now just passed the two-million-dollar mark, and it is well started on its way to the third great mile-post. In point of accumulated assets, it is, as shown by the most recent figures obtainable, the largest and strongest association in the State of New York by several hundred thousand dollars, and its growth during the year 1895 has been, so far as we are able to learn, greater than that of any other similar institution in the United States."

From the seventh annual report, dated March 15th, 1897, as well as I can see from this report there is nothing stating that they had not made the profits and were not getting on well up to that time. The report is satisfactory. The president's address is not made in this report.

In the eighth annual report, February, 1898, this paragraph occurs: "After a thorough examination into its affairs, the State 'banking department' gave them a clean bill of health."

That takes them up until after the time of the maturity of my shares.

Q. You did not see, therefore, that the promises of the association were unreasonable?

A. No, sir; I did not see that they were unreasonable.

Q. When did you first find out that the association was
30 not going to carry out what you considered your contract; that they were not going to pay you at the end of 78 months?

A. Not until I made my demands on them at the maturity of the stock.

Q. Did you send them proofs and withdrawal claim?

A. At the end of the 78 months?

Q. Yes.

A. I did, according to their by-laws.

Q. Look at that letter. (Exhibits letter.) Did you receive that letter?

A. I did.

The following letter is introduced by the plaintiff:

SYRACUSE, N. Y., *Nov.* 15, 1897.

Bright Williamson, Darlington, N. C.

DEAR SIR: I beg to acknowledge receipt of your favor of October 27th, enclosing proof of ownership, etc., of certificates Nos. 4889, 4900, and in reply thereto beg to say that the same cannot be accepted or allowed for the face or maturity value of said represent-tive certificates for the reason that the dues paid thereon, together with the earnings made thereon by the association have — brought said shares to their par or maturity value, to wit: $100 per share. At the time those shares were written, it was supposed, we assume, that the same would mature in 78 months, and that is the reason why we assume these proofs were furnished. The earnings of the company have not been sufficient to accomplish this, and, therefore, the maturity value of the shares cannot be paid at the present time. We see no other way for you to do except to continue the payment of your monthly dues on your shares until the same have reached par.

I might add that 78 months in your certificate of shares is simply an estimated period of maturity.

Very sincerely,

C. A. POOLER,
Sec'y and Gen. M'g'r.

Q. That was in reply to what?

31 A. To one I wrote them on October 27th.

Q. What had you done?

A. I had written and enclosed the proof of ownership of the certificates as required by the by-laws, and proofs of payment and demands for payment.

Q. Upon getting that letter on November 15th from C. A. Pooler, what did you do?

A. I then commenced suit.

Q. How long after that letter before you commenced suit?

A. Immediately; as soon as the 60 days were out—after making the claim.

Q. In 1895 Mr. Pooler was here in Darlington?

A. Yes, sir.

Q. Was any effort made at that time to make you change your contract?

A. Yes, sir; and they not only endeavored to get me to change my contract, but did get a good many others to change their contracts. The effort was made by Mr. Pooler and Mr. Carpenter, both together.

Q. You declined to change?

A. I declined to change.

Q. Did you agree to change?

A. I did not agree to change. Mr. Pooler and Mr. Carpenter were down here at that time, and I was boarding at the hotel at that time, and they were stopping there. They got a good many of the members of the association to change from 78 months to a new plan they offered; and as an inducement gave them a long time to pay in and made the monthly payments less. In many cases where they declined to do so with that inducement they offered to lend them more money. It was tight times, and a good many changed for that reason. I thought the new plan that they offered was not advisable and did not change, and advised my friends not to do so. Some of them did and some did not.

Cross-examination:

Q. You say you are president of the bank of Darlington?

A. Yes.

Q. You have had a good deal of experience with corpora-
32 tions?

A. I have had some.

Q. You claim to be pretty much of an expert in stocks and bonds?

A. No, sir; we don't see much of those things around this way.

Q. What is the par value of stock?

A. One hundred dollars a share.

Q. In this institution?

A. Yes, I have Mr. Pooler's letter saying so.

Q. How is the par value fixed? By what?

A. Fixed by the definite contract.

Q. Generally how is the par value of a corporation fixed?

A. By the charter.

Q. And by the by-laws?

A. Yes, sir.

Q. And on the certificate of stock?

A. Yes, the certificate of stock also.

Q. What matures stock in this corporation?

A. 78 months in this association.

Q. Does not the par value depend on the profits made?

A. The par value of the stock?

Q. Yes; and the amount of dividends depends on the earnings?

A. The market value might depend on the earnings and dividends, but not the par value.

Q. What are the dividends paid out of?

A. Out of the earnings.

Q. You introduce these little books, I suppose, to prove the maturity of the stock; do you know of your own knowledge whether the earnings of the Eastern Building and Loan Association has matured your stock? In other words, whether your share of the profits of that institution would entitle you to one hundred dollars a share on your stock? Do you know that as a positive fact from the books of that institution?

A. Well, I cannot say that I have sufficient knowledge to know it as a fact, but judging from the books and literature that they send out I would.

33 Q. From your examination of these statements you would say that this association is a solvent concern and not an insolvent concern?

A. I don't suppose they are bankrupt. I suppose they are solvent.

Q. The certificate says the terms and conditions in the by-laws constitutes part of this contract, did you read the by-laws?

A. No, sir.

Q. Did you enter into a contract without reading all of it.

A. Yes, sir.

Q. You say you made 78 stock payments?

A. Yes, sir.

Q. What does that amount to—$1,462.50, doesn't it? That is what you paid into the institution?

A. Yes; that is all I paid in.

Q. What are you suing for?

A. $1,562.50.

Q. You paid in $1,462.50, you are suing for $100 more than you paid in?

A. Yes.

Q. And you borrowed $937.50?

A. Yes.

Q. What did you pay the amount you borrowed with?

A. Well that is just an offset against the $2,500.

Q. Mythical value of the stock, and you paid it back in alleged misrepresentation?

A. Of course it is mythical if all of their statements are not true; if that association is insolvent.

EXHIBIT "A."

Application for Shares in the Eastern Building & Loan Association of Syracuse N. Y.

Agent: Samuel Carpenter, general agent.

I, Bright Williamson of Darlington,
Name. Town.

County of Darlington, State of South Carolina,
County. State.

34 Occupation: Cashier,
Street No. or box, —.

hereby apply for membership in the Eastern Building & Loan Association of Syracuse, Onondaga county, New York, and subscribe for 25 shares of regular stock.

I hereby agree to abide by all terms, conditions and by-laws contained or referred to in the certificate of shares, and will also comply with all the rules and regulations of said association. And do also hereby, in order to facilitate the transaction of business of the Eastern Building & Loan Association of Syracuse, N. Y., make, constitute and appoint the secretary of said association, for me, in my name, place and stead, to appear and vote as my proxy upon any and all shares of stock at any time held by me, or standing in my name in said association during my absence, at any and all meetings of stockholders or directors and upon any and all matters which may properly come before any such meeting, and attorneys, one or more under him, from time to time, in writing to appoint, hereby authorizing, ratifying and confirming all that my said attorney, or his substitute, may do, or cause to be done as such proxy by virtue hereof.

This proxy is not in any manner to affect my right to vote on all such stock whenever I am personally present at any stockholders' meeting.

In witness whereof I have hereunto set my hand and affixed my seal this 28th day of January A. D. 1891.

Signature of applicant:

BRIGHT WILLIAMSON. [SEAL.]

Witness:
SAMUEL CARPENTER.

The price of stock must accompany this application.

EXHIBIT "B."

Series No. B–2. Maturing August 1st, 1897.

Eastern Building & Loan Association of Syracuse, N. Y.

Certificate number.	Number of shares.	Amount.
4990.	15.	$1,500.00.

This certifies that Bright Williamson, of Darlington, county of Darlington and State of South Carolina, is hereby constituted a shareholder of the Eastern Building & Loan Association of Syracuse, N. Y. incorporated under the laws of the State of New York, and holds fifteen shares therein of one hundred dollars each, and in consideration of the membership fee, together with agreements and statements contained in the application for membership in the association, and full compliance with the terms, conditions and by-laws printed on the front and back of this certificate, which are hereby referred to and made a part of this contract, and the said Eastern Building & Loan Association of Syracuse, New York, agree to pay said shareholder, or his heirs, executors, administrators, or assigns the sum of one hundred dollars for each of said shares at the end of seventy-eight months from the date hereof, or in case of his death prior to the expiration of seventy-eight months, the association will pay the sum of all monthly installments paid on this certificate with interest at 6 per cent. per annum, payable in the manner and upon the conditions set forth in said terms, conditions and by-laws hereto attached. All payments under this certificate are payable at home office of the association at Syracuse, New York, within sixty days after the acceptance and approval of satisfactory proofs. This certificate of shares is issued to and accepted by the holder thereof upon the following express terms and conditions:

First. The shareholder agrees to pay, or cause to be paid, a monthly installment of seventy-five cents on each share
36 named in this contract, the same to be paid on or before the last Saturday of each month until such share matures or is withdrawn.

Second. If the shareholder shall fail to pay, or cause to be paid, any monthly installment on or before the last Saturday of each month, he shall pay a fine of ten cents per share for each and every month the payment may be in arrears.

Third. Stock in this association is non-forfeitable; but if a monthly payment on any share becomes past-due and payable for a period of six months or more, such share shall be sold at auction for the purpose of paying the arrearages. The proceeds of the sale shall first be used to pay all back monthly payments and fines; the balance remaining after paying all accrued fines and monthly payments shall be paid to the member in whose name the stock stands at the time of the sale. If the stock brings no more than enough to pay the accrued fines and monthly payments it shall be bid in by the association and cancelled, and the amount standing to the credit

thereof in the loan fund shall be divided among the other shares as profits.

Fourth. Any member may draw their monthly installments at any time by first giving thirty days' notice, and will receive 6 per cent. annual interest on all shares of six months' standing and up to two years; the third year 7 per cent.; any time after the third year and before maturity, 8 per cent.

Fifth. If a shareholder dies his personal representatives may withdraw his shares at any time, or continue on to maturity.

Sixth. At stated periods the profits arising from interest, premiums, fines and other sources shall be apportioned among the shares in good standing.

Seventh. All payments must be paid to an authorized agent, or sent to the secretary at the home office by draft, express or
37 money order, or registered letter. Individual drafts or checks not receivable.

Eighth. The association reserves the right at any time to make an investigation in all cases prior to the approval of claims.

Ninth. The by-laws of this association, which are attached to and indorsed hereon, are a part of this contract, and such by-laws and this certificate are to be construed together as part of the contract between the association and the shareholder.

Tenth. No shares shall be assignable or transferable on the books of the association, except by the shareholder paying a transfer fee of two dollars for entering the same, and upon consent of the association, indorsed thereon by the secretary, after all dues and claims on the same have been paid.

Eleventh. It is agreed by all shareholders of this association that desire loans, that all money in the loan fund shall be sold at a uniform rate of ten per cent., bid as premiums on all loans.

Twelfth. No shareholder shall have any claim to any interest in the affairs, assets or funds of this association, nor the control of them, except as above specifically set forth, and assumes no further liability of any kind whatever, except as hereinafter described.

Thirteenth. In every case where this contract shall cease and determine, or become null and void, then all payments made thereon shall become forfeited to the association.

Fourteenth. Any action brought against this association shall be commenced within six months after filing proofs, and in the county of Onondaga, and State of New York.

Fifteenth. No agent has authority to change this contract in any way, and the association assumes no obligation for any statements not contained in its printed literature.

JOHN J. W. REYNOLDS,
Secretary and General Manager.

38 Given under the seal of said association at Syracuse, New York, this 2nd day of Feb'y, A. D. 1891.

[L. S.] H. H. LOOMIS, *President.*

Certificate No. 4989 for 10 shares same as above.

By-laws printed on back of certificate:

EXHIBIT "C."

Eastern Building and Loan Association.

By-laws.

ARTICLE I.

Name, Object, Location, and Duration.

SECTION 1. This association shall be known as the Eastern Building and Loan Association of Syracuse, N. Y.

SEC. 2. Its object is to afford its members a safe and profitable investment of their savings, to facilitate the purchase and improvement of real estate and provide the advantages usually expected from savings banks and other institutions of like character.

SEC. 3. The principal place of business of this association shall be located at Syracuse, N. Y., but the branches or agencies may be located and business done in any part of the State of New York, or in any State or Territory of the United States where no legal prohibition exists, by authority of the board of directors, to be evidenced by a vote of the majority of the board, and spread upon its records.

SEC. 4. This association shall continue for forty years.

ARTICLE II.

Capital Stock.

SECTION 1. The capital stock of this association shall be fifty million dollars, divided into shares of one hundred dollars each.

39 SEC. 2. All stock shall be issued in monthly series, dated on the first day of the month of its issue. Each shareholder in good standing shall be entitled to one vote for each share of stock held by him, and on which all dues have been paid, at all meetings of the shareholders.

ARTICLE III.

Directors and Officers.

SECTION 1. There shall be elected by ballot nine directors of this association at the annual meeting thereof by a majority of the stock represented and voting.

SEC. 2. The officers of this association shall consist of president, vice-president, secretary and general manager (combined), and treasurer, to be elected by and from the board of directors. All vacancies in the board of directors caused by death, resignation or otherwise, and all vacancies from any cause, shall be filled by the board of directors until the next annual meeting of the association.

SEC. 3. The officers and directors of the association shall receive such salaries as the board of directors may deem advisable, provided the same must always be paid from the expense fund.

SEC. 4. All bonds to this association from any officer shall be first approved by the board of directors.

ARTICLE IV.

SECTION 1. The annual meeting of the stockholders shall be held at the home office of the association on the second Monday of May of each year commencing with the year 1891, between 2 and 4 o'clock p. m., of which due notice shall be given according to law.

ARTICLE V.

Board of Directors, Meetings, and Duties.

SECTION 1. Stated meetings of the board shall be held monthly on the first Tuesday of each month, Special meetings may
40 be called by the secretary, or by request of two or more members of the board.

SEC. 2. It shall be the duty of the board of directors to pass upon the sufficiency of all property offered as mortgage security for loans, and attend generally to the financial affairs of the association. They shall have the management of the association not otherwise provided for in the by-laws, and the right to disburse such amounts as may be necessary to properly conduct the business of the association. They shall cause the secretary to mail to each shareholder, after each annual meeting, a general statement of the business of the preceding year and a report of the financial condition of the association, as found by them after a thorough examination. A majority of the board shall constitute a quorum for the transaction of any business.

ARTICLE VI.

President and Vice-President.

SECTION 1. It shall be the duty of the president to preside at all the meetings of the shareholders and of the board of directors, to sign all certificates of stock and sign all releases of mortgages, and to perform all other duties usually appertaining to this office.

SEC. 2. The vice-president shall perform all the duties of the president in his absence. In case of any vacancy in that office he shall be *ex officio* president until the vacancy is filled.

ARTICLE VII.

Secretary and General Manager.

SECTION 1. It shall be the duty of the secretary and general manager to attend all meetings of the shareholders and board of directors; to receive all money paid into the association and to pay the same over from time to time to the treasurer, and take his receipt therefor, and keep all accounts of the association between
41 the association and the shareholders; issue all notices; conduct all correspondence; draw and sign all orders on the

treasurer, and sign all certificates of stock under the direction of the board.

SEC. 2. Whenever required by the board, he shall submit a statement in writing of the financial affairs of the association. The books of the association shall be kept by him, and at all times be subject to the inspection of the board. He shall, under the direction of the board of directors, see to the settlement of all claims and bills, and shall keep insured all interest the association may have in any building or property liable to loss by fire; with the assistance of the attorney of the association, he shall protect its interests in all tax sales or forfeitures or forsclosures of property in which it may hold any interest, and for these purposes, is authorized to draw on the treasurer without further action of the board of directors, such payments to be reported at the next meeting of the board of directors. He shall receive from the attorney, after being recorded, all deeds or other documents pertaining to the business of the association, and make proper entry of the same in the books kept for that purpose. He shall give bond, to be approved by the board of directors, for the benefit of the association, conditioned for the faithful performance of the duties of his office *and* the direction of the board of directors.

SEC. 3. It shall be his duty, as general manager, to attend to all advertising, printing and publications; look after all bonds of agents, local and special; look after all property that is offered for security and report the same to the board, and to have the general supervision over all agencies, to appoint agents, assistants and other necessary help.

ARTICLE VIII.

Treasurer.

SECTION 1. It shall be the duty of the treasurer to receive all moneys from the secretary and deposit the same in the name
42 of the association in such bank as shall be designated by the board of directors signed by the secretary. He shall keep correct account of all moneys received and paid him. He shall deposit with the trustee all abstracts of title, deeds, bonds, mortgages, contracts and other securities belonging to the association. He shall make to the board of directors, when required, a statement in writing or otherwise of the full business of his office. He shall furnish a satisfactory bond, to be approved by the board of directors, for the benefit of the association, conditioned for the faithful performance of the duties of his office, in conformity with the by-laws and the order of the board of directors.

ARTICLE IX.

Attorney.

SECTION 1. It shall be the duty of the attorney to examine all abstracts and records relating to the title of the real estate offered as security for loans, and certify in writing to the board of directors all

facts that might affect the interests of the association, in case such security may be accepted.

SEC. 2. He shall prepare all papers incident to making sales and securing loans by the association, cause them to be properly executed, file the same for record in the proper office of the county, and when so recorded deliver the same to the secretary, and in general do and perform all things incident to his office.

ARTICLE X.

Official Bonds.

SECTION 1. All officers holding responsible positions shall execute to the association such bonds for the faithful performance of their duties as the board of directors may require.

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ARTICLE XI.

Funds.

SECTION 1. The receipts of said association shall be divided into two classes, which shall be called respectively the loan fund and the expense fund. The expense fund shall consist of all admission, transfer, insurance, abstract and attorneys' fees, amounts paid for insurance or taxes on property on which loans have been made, fees, costs and disbursements of foreclosure, together with ten cents per share per month from the monthly payments on stock, and this fund so constituted shall be devoted to the payment of operating expenses and said insurance and taxes.

SEC. 2. The loan fund shall consist of all receipts which do not go to the expense fund, as hereinbefore provided, together with all interest, fines, earnings and accumulations from whatever source. No money can be drawn from the loan fund for any other purpose than the making of loans on security, as provided by the by-laws, and to pay amounts due withdrawing shareholders.

ARTICLE XII.

Eligibility.

SECTION 1. All new shareholders elected or appointed as directors or officers of this association shall concur in and accept the previous resolutions, agreements and obligations of said association, and shall only become eligible to such position after having performed all personal obligations agreed upon prior to their election or appointment.

SEC. 2. Persons not of lawful age can only become shareholders through their lawfully appointed guardians, who shall sign the application as provided by law.

ARTICLE XIII.

Elections and Inspectors.

44 SECTION 1. At the stated meeting of the board of directors next preceding the day appointed for the annual meeting,

there shall be elected by the board of directors three shareholders, not candidates for election, to act as inspectors thereof, who shall receive the votes, count the same, and report in writing the names of the persons having the greatest number of votes, who thereupon shall by the president be declared duly elected, whereupon the secretary shall give notice to such directors.

Any member may authorize another member by written proxy to vote his stock provided that all proxies shall be filed with the secretary at the home office at least twenty days before the opening of the meeting at which they are to be used.

ARTICLE XIV.

Contract of Members.

SECTION 1. The terms and conditions expressed in the certificates of stock, in connection with the application for membership and the by-laws of this association, form the contract between this association and each shareholder therein.

SEC. 2. All persons desiring to become shareholders of this association must fill out, sign and deliver to the secretary an application according to the form adopted by the association, which application shall be a part of said contract with this association. Such applicant shall also pay a membership fee of one dollar per share for each and every share held by him.

SEC. 3. All loans made by this association shall be upon satisfactory note and first mortgage secured on real estate, together with fire-insurance policy in some approved company if upon improved property, and for every one hundred dollars of loan made to a shareholder, who shall in addition thereto transfer in pledge to the association one share of the stock held by said shareholder as collateral security on all loans made by the association to a shareholder. Said shareholder shall pay an interest of five per cent. per annum and a premium of five per cent. per annum on all said loans. All interest and stock payments shall be paid on the last Saturday of each month during the continuance of said loan and at the same time the shareholders not borrowing shall pay their monthly payments at the principal office of the association.

SEC. 4. Abstracts of title must be furnished by the borrower, also the legal examination and opinion of the attorney of this association that the title to the property offered as security is clear and owned in fee-simple, and he must so report. All such abstracts, searches and attorneys' fees, and all fees for recording, drawing and canceling mortgage are to be paid by the borrower.

SEC. 5. Borrowing members who shall neglect to pay any instalments on stock and interest on their loans, as the same become due, shall pay to the association a fine of twenty cents per month on each one hundred dollars that they may have borrowed from the association. Non-borrowing members who shall neglect to pay their monthly instalments promptly shall pay to the association a fine of ten cents per month on each share of stock owned by them.

SEC. 6. Should a shareholder whose property is mortgaged to the

association desire to release the same by prepayment of his indebtedness, he may on application to the association, be allowed to do so by giving thirty days' notice in writing of such intention, and be allowed an equitable discount therefor, to be fixed by the board of directors.

SEC. 7. Any shareholder may have his mortgage transferred from one piece of property to another by giving thirty days' notice in writing, the shareholder to pay all expenses incurred by the transfer of the same.

SEC. 8. Any shareholder may sell or transfer property mortgaged to the association, and the purchasers must assume all stipu-
46 lations, agreements and conditions of the original mortgagor by a proper instrument in writing, to be paid for at his own expense. Said person purchasing must also purchase the shares held by said shareholder, which will be transferred on the books of the association, to said purchaser, all assessments or instalments thereon being paid up to time of transfer upon payment of fees therefor; or the association may accept a new mortgage from said purchaser to secure the former loan, until the expiration of said loan, upon the same or other sufficient property, upon payment of all fees and expenses thereof.

SEC. 9. All deeds, notes, leases or other written instruments requiring to be executed, and all satisfactions and releases of mortgages and other indebtedness ordered by the board of directors, shall be signed in the name of the association by the president, or in his absence by the vice-president, and countersigned by the secretary, and when necessary acknowledged by the president and secretary of the association in their official capacity, and have the corporate seal attached.

SEC. 10. If any shareholder or any person shall neglect to pay the interest or instalments on his loan, or the regular monthly instalments, fees or dues for six (6) months, the secretary may compel payment of principal, interest and premiums, assessments, fees or dues, by proceeding on his note and mortgage, which shall at once become fully due and payable, and the association may cancel and treat as forfeited the said shareholder's shares of stock, whether deposited as collateral security or not, and all payments previously made thereon shall be forfeited to the ascociation. Punctuality and strict performance on the part of all members, borrowers and shareholders, in payment of fines, dues, interest, loans and premiums, are made the essence of the contract.

SEC. 11. Any shareholder may pay his instalments, inter-
47 est and premium in advance, or deposit with the association a certain sum to be used for such payments as they may fall due and the association will receipt for the same and notify when said deposit is exhausted.

If members make payments in advance for a period of six months and not over two years, a discount may be allowed at the rate of seven per cent. per annum for the time each payment is actually advanced.

SEC. 12. Any shareholder who has made a loan by giving taxable

property as a security shall be bound to pay all State or city or other taxes or assessments as they become due, in addition to all other payments, and his failure to do so will make his loans, notes, mortgages, premiums, and interest at once fully due, and payable at the option of the board of directors.

SEC. 13. Each share of stock shall be charged with any and all amounts that may be owing from the shareholder or of his assigns, to the association, whether in dues, loans, fines, interest or premiums, and all certificates of stock in said association shall, whether mentioned therein or not, be subject to a lien thereon, to secure any such indebtedness, and the right to deduct and withhold the amount of any such indebtedness is hereby expressly reserved to the association.

SEC. 14. All shareholders shall pay or cause to be paid a monthly instalment of seventy-five cents on each share named in their certificate, until the same shall be fully paid; said instalment to be paid to the association on or before the last Saturday of each month. Shareholders are required so pay monthly instalments without notice.

SEC. 15. In case of change of residence or post-office address, name of the shareholder, or his or her legal representative notice thereof in writing shall be given at once to the secretary of the association.

SEC. 16. All remittances for advance instalments, pre-
48 miums, monthly instalments, fines and penalties, interest and premiums, and all other payments, shall be made to the secretary of the association at the home office, and registered letter, express or money order or drafts. Individual checks shall not be receivable.

SEC. 17. Should the board of directors require further evidence of a claim than is given in the proof furnished on the same, it hereby reserves the right to extend the time of payment until such necessary proof is furnished and investigation is made. The association shall have sixty days after filing of the proofs of a claim, and the approval thereof by the board of directors, in which to pay the same, and this applies to claims maturing by death as well as to maturity of stock.

SEC. 18. If shares are withdrawn at any time before maturity, the holders thereof will be entitled to receive the amount paid into the loan fund in monthly payments; after six payments have been made on stock the holder thereof can withdraw his monthly instalments that have been paid to the loan fund with interest at the rate of six per cent. per annum, seven per cent. after two years and eight per cent. after three years.

SEC. 19. Any shareholder wishing to withdraw his stock may be allowed to do so at any time, but the association shall not be required to pay out more than one-half of the net receipts of the monthly instalments paid in that month, to withdrawing members.

SEC. 20. The association reserves the right to mature any certificate at any time after one year, and to issue a paid-up certificate of shares, payable at maturity of stock, with interest at the rate of six

per cent. per annum, or at maturity of stock in pledge, payable at any time of maturity of loan.

The association reserves the right to cancel any unpledged certificate after it has been in force three years, upon the payment
49 to the owner, of the total amount of instalments paid thereon, together with eightper cent. per annum as added dividend.

SEC. 21. And it is hereby expressly agreed between all shareholders and this association, that a payment of one hundred dollars per share, named in their certificate, that has been in force till maturity shall be accepted as full payment of all claims on their certificate or against this association.

SEC. 22. Paid-up and non-assessable stock may be issued and sold at the price of fifty dollars per share, payable on date of issue. Any parties holding such paid-up stock, wanting to withdraw the same before maturity, may do so and receive six per cent. annual interest from the date of issue of said stock.

SEC. 23. Paid-up stock shall be endorsed by the trustee and cannot be withdrawn for one year from date of issue.

ARTICLE XV.

Loans.

SECTION 1. Each shareholder, for each share named in their certificate, shall be entitled to a loan of one hundred dollars from the association, provided they shall first make application for such a loan upon a blank furnished by the association for that purpose, if the condition of the loan fund in the treasury shall warrant it. All applications for loans shall be filed and numbered consecutively as received, and be examined and approved, or rejected, by the board in their regular order.

SEC. 2. All shares must be in force three months before said shareholder shall be entitled to a loan. All applications for loans are part of the contract of the shareholders with this association. Nothing herein contained shall prevent the board of directors from loaning funds of the association to any member in greater sums than the above, provided upon approved securities.

50 ARTICLE XVI.

Local Boards.

SECTION 1. Whenever sufficient stock has been sold in any town to make it advisable, the members residing in each town may organize a local board or branch of the association. The officers of the local organization shall consist of a board from five to nine directors, from whose number shall be elected a president, secretary and treasurer (combined), and attorney; all of whom must be shareholders in the association; these officers shall hold office one year and until their successors are elected.

SEC. 2. The traveling agents of the association are given authority to appoint the first officers of the local board. Provided, however,

that officers so appointed shall only hold office until the members of the local board meet and elect their successors.

SEC. 3. It shall be the duty of the officers of the local board to pass on all applications for loans which are received by the association from members residing in the town where such local board is located, and to protect the interest of the association in all practicable ways.

SEC. 4. Members may, if they so desire, make monthly payments on stock to the local treasurer. But such local treasurer shall be deemed to be the agent of the members and not of the association.

SEC. 5. As soon as the officers of the local board have been appointed or elected and the names of such officers have been certified to the association by a traveling agent or by the local secretary, a local board charter shall be issued to such board.

SEC. 6. The president of the local board shall call a meeting thereof whenever three members shall request him to do so.

51 ARTICLE XVII.

By-Laws—Amendment.

SECTION 1. No amendment shall be made to these by-laws unless previously indorsed by resolution of the board of directors and adopted by a majority vote of the stock of said corporation.

EXHIBIT "D."

DARLINGTON, S. C., *Oct. 27th*, 1897.

To the board of directors of the Eastern Building & Loan Association of Syracuse, N. Y.

GENTLEMEN: I hereby give notice that I have withdrawn, and do hereby withdraw my stock and membership in your association, and demand payment of my twenty-five shares evidenced by my certificates numbered 4989 and 4990 now in your possession, at one hundred dollars per share as guaranteed by the association in my contract of membership, less the sum of nine hundred and thirty-seven $\frac{50}{100}$ dollars borrowed by me on said shares, as follows:

25 shares valued at expiration of 78 months, dues being all paid	2,500.00
Less sum borrowed—interest on which has been paid to the expiration of the said 78 months	937.50
Balance due me	1,562.50

The certificates of shares are in your possession, having been pledged to secure the said loan. Your books will show that monthly dues on the shares were promptly paid for the whole period of the 78 months required by the contract for their maturity, and I also append the certificate of the local treasurer at this place in further assurance of the same, and your books will also show that monthly

interest and premium on the loan was likewise promptly
52 paid until the expiration of the 78 months, when by the express contract between us, the interest was to cease and the loan to be regarded as paid by deduction from the value of the shares. I further stand ready if required to produce the receipts for the said payments. Let me know if you admit your liability for the sum due me as above stated $1,562.50, and will pay the same.

Yours truly, BRIGHT WILLIAMSON.

Ex. "E."

DARLINGTON, S. C., *Oct. 27th*, 1897.

Mr. Chas. A. Pooler, sec'y & gen'l manager, Eastern Building & Loan Association, Syracuse, N. Y.

DEAR SIR: Enclosed find notice of my withdrawal of stock and membership from your association, and demand of payment of the amount due upon my shares, which please present and file at once with your board of directors.

Very truly, BRIGHT WILLIAMSON.

Ex. "F."

OCT. 27TH, 1897.

This is to certify that Bright Williamson, owner of twenty-five (25) shares stock of the Eastern B. & L. Ass'n, represented by certificates Nos. 4989 and 4990, has paid all dues claimed thereon by said Eastern B. & L. Ass'n up to and including the last Saturday in July, 1897, for which I hold the association's receipt.

GEO. H. EDWARDS,
Local Treasurer.

53 *Defense.*

Defendant moves for a nonsuit on the grounds:

1. That there is no proof of the entire contract. There has been no introduction of this contract of loan.

After full argument on both sides the court overrules the motion for a nonsuit.

Exception noted by the defendant.

Defendant introduces contract of loan between the Eastern Building and Loan Association and Bright Williamson. (Ex. "K.")

Defendant introduces application for advance. (Ex. "J.")

Defendant introduces application for loan. (Ex. "I.")

Defendant offers to introduce articles of incorporation of defendant association, dated February 22, 1890.

Plaintiff objects. Objection overruled. Exception noted.

Articles of incorporation of the defendant association introduced, dated February 22, 1890. (Ex. "L.")

Defendant introduces amended articles of incorporation of the defendant association, dated May 4th, 1894. (Ex. "M.")

Defendant introduces statute law of the State of New York, amendment of 1875. (Ex. "N.")

Defendant offers to introduce the construction placed upon that statute (amendment of 1875) of the State of New York by the court in the case of O'Malley *vs.* The People's Building and Loan Association. (Ex. "O.")

Plaintiff objects. Objection overruled. Exception noted.

Defendant introduces the case of The People *vs.* Lowe *et al.*,
54 (Ex. "Q") 117 N. Y., page 175; also reported in 22 Northeastern Reporter, p. 1060.

Defendant introduces a letter from Bright Williamson to the board of directors of the Eastern Building and Loan Association, dated October 27th, 1897. (Exs. "D," "E," "F.")

Defendant introduces deposition of Nathan C. Visscher and D. A. Pierce. (Ex. "G" and Ex. "H.")

Defendant introduces the case of Englehardt *vs.* The 5th Ward Dime Saving and Loan Association. Reported in 148 N. Y., p. 281; and in Northeastern Reporter, vol. 42, p. 710. (Ex. "P.")

Ex. "G."

NATHAN C. VISSCHER being called by the defendant and duly sworn, deposeth and saith in answer to interrogatories as follows:

By COUNSEL FOR DEFENDANT:

Q. 1. Where do you reside, and what is your business?

A. In the city of Syracuse, N. Y.; I am assistant secretary and actuary of The Eastern Building and Loan Association, the defendant above named.

Q. 2. How long have you been such assistant secretary and actuary of the defendant?

A. Since December, 1897.

Q. 3. Have you been connected with the defendant association in any other capacity than as assistant secretary and actuary, and if so, in what capacity, and how long?

A. I have been connected with the defendant since July, 1891, and in the capacity of cashier until December, 1897.

Q. 4. Did your duties in your office include anything in relation to the applications for shares in defendant association, and if so, what?

A. Yes; I knew of all applications for memberships for shares which were received by the defendant association.

Q. 5. You may state whether or not any application for membership and shares in the defendant — was made at any time by
55 one Bright Williamson, of Darlington, Darlington county, South Carolina, and if so, where, when, and how, and for how many shares?

A. Yes; on the 28th day of January, 1891, in the city of Syracuse, county of Onondaga, and State of New York, by a written application for twenty-five shares of regular stock.

Q. 6. Have you said application, and if so, will you identify it?

A. I have said application signed by Bright Williamson, plaintiff in this action, dated the 28th day of January, 1891; said applica-

tion is for twenty-five shares, and in red ink it is numbered 4989 and 4990.

Q. 7. What, if anything, was done by the said association with said application on its receipt here at the home office?

A. It was accepted by the defendant, and two certificates were issued and mailed to Bright Williamson, of Darlington, South Carolina. One of said certificates is numbered 4989, for ten shares of stock of the par value of $100 each, dated the 2nd day of February, 1891; signed by Jno. J. W. Reynolds, secretary and general manager, and H. H. Loomis, president, and bearing the corporate seal of the defendant. Said certificate is in series No. B–2, with the by-laws printed upon the back of the same. The other certificate is dated the 2nd day of February, 1891, numbered 4990, for fifteen shares of stock in the defendant of the par value of $100 per share, in series No. B–2, signed by Jno. J. W. Reynolds, secretary and general manager, and by H. H. Loomis, president, and bearing the corporate seal of the defendant, and with the by-laws of the defendant printed on the back thereof.

Q. 8. Are shares of the association issued, or applications thereof accepted, at any other place than at the home office of the defendant association at Syracuse, N. Y.?

A. No.

Q. 9. You may state whether or not any share has ever been issued by the defendant association, or any application has
56 ever been accepted therefor, at any other place than at its home office in Syracuse, N. Y., to your knowledge?

A. No.

Q. 10. You may state whether or not an advance for loan on said shares, or any of them, represented by said certificates Nos. 4989 and 4990, was made by the defendant to the plaintiff, Bright Williamson, and, if so, for how much, and when and where?

A. Yes; a loan was made upon the shares represented by said certificate, by the defendant on said written application signed by Bright Williamson, the plaintiff, on the first day of April, 1895, and witnessed by J. S. Michie, in which said Williamson applied to the defendant for a loan of $937.50 on the security of the monthly payments made by him on certificates Nos. 4989 and 4990, and by which application he authorized L. C. Crouch, of Syracuse, N. Y., to bid a running premium of not exceeding the sum of two per cent. per annum thereon, payable monthly, for the privilege of obtaining such advance, and in addition, agreed to pay interest on said loan at the rate of six per cent. per annum, payable monthly, and to comply with the articles of incorporation, by-laws and regulations of the defendant, and to execute such other papers as might be required by the defendant as security for the repayment of said advance.

Q. 11. Were any other papers executed or signed by the said Bright Williamson in reference to such loan?

A. Yes; he signed a further paper called application for advance, which was addressed to the directors of the defendant, wherein he states that having obtained a preference for an advance of $937.50 by

stock loan on twenty-five shares of stock held under certificates 4989 and 4990, that the same should be granted. He also, on the first day of April, 1895, signed another written instrument, which he swore to before J. S. Michie, on the 15th day of April, 1895, in and by which he agreed, in consideration of said loan of $937.50
57 being made to him upon his said shares of stock in the defendant, to repay the aforesaid sum at or before the maturity of the twenty-five shares of stock, together with $6.25, being the interest and premium on said loan and payable at the office of said association on or before the first business day of each and every month thereafter until the date of maturity of said stock, or until the principal sum was fully paid, with semi-annual interest on all sums due and unpaid, together with all fines that might be imposed, pursuant to the by-laws of the defendant, and to keep and perform all promises and engagements entered into with the defendant, according to the true intent and meaning of said by-laws and constitution, and for the faithful performance of the covenants and agreements therein, the plaintiff agrees to sell, assign, transfer and set over unto the said defendant, its successors and assigns, all his right, title and interest in and to his said shares of stock as collateral security for the payment of said indebtedness of $937.50, and the interest and premium which he had agreed to pay upon the same. That in and by said instrument the said plaintiff agreed that in case default should be made in paying the principal, interest or instalments on said loan, of the regular monthly installments, fines or dues, on said shares, or in the performance of any of the covenants or agreements therein contained, for a period of six months, then the whole sum thereby secured and agreed to be paid, should at once become due and payable at the option of the defendant and without notice, and the defendant might cancel and treat as forfeited said shares, and all payments thereon made. The plaintiff also, in said instrument, agreed that in case said shares, and the payments thereon, should be forfeited and the net proceeds from the same should be insufficient to pay said indebtedness, he covenants and agreed to pay the deficiency.

Q. 12. Are the three papers which you mention, namely,
58 the application for loan, dated April 1st, A. D., 1895; the application for advance, which is not dated, and the written instrument signed by the plaintiff, dated April 1st, 1895, and sworn to by him on the 15th day of April, 1895, now in your possession?

A. They are.

Q. 13. Where were said three papers which you have just mentioned received by the defendant?

A. At its home office in the city of Syracuse, Onondaga county, N. Y.

Q. 14. Did any one have any right or authority to pass upon said application for advance aside from the directors of the defendant?

A. No, sir.

Q. 15. When the application for advance was made by the plain-

tiff to the defendant, and upon receipt of the papers which you have mentioned, what was done?

A. The directors of the association approved of the advance and decided to grant the same, and thereupon, and on or about April 19th, 1895, the defendant loaned the sum of $937.50 to the plaintiff, he giving his obligation therefor, which I have before indentified and described, being signed by him on the first day of April, 1895, and sworn to in the State of South Carolina, county of Darlington, on the 15th day of April, 1895, before J. S. Michie, notary public.

Q. 16. In what manner did you deliver to the plaintiff the sum of $937.50 applied for by him?

A. By the check of the association for that sum, drawn payable to his order, and mailed to him at his address in Darlington, South Carolina, by the defendant at its home office in the city of Syracuse, N. Y.

Q. 17. Did the plaintiff deliver his certificates of stock, Nos. 4989 and 4990, to the defendant as collateral security for the payment of his loan, and if so, how?

A. Yes; he sent both of said certificates to the defendant on or about the date when said loan was made, by mail, from Darlington, South Carolina, and both of said certificates were received
59 by the defendant through the mails at its home office in the city of Syracuse, N. Y.

Q. 18. Are the two certificates which you have described now in the possession of the defendant?

A. Yes.

Q. 19. What is the maturity value of each of the shares represented by the certificates you have mentioned and described?

A. $100.

Q. 20. When does a share mature?

A. When the dues paid in thereon, plus its *pro rata* share of the earnings apportioned and credited, equals $100.

Q. 21. What payments have been made by the plaintiff upon the loan of $937.50?

A. The plaintiff has paid the interest and premium on said loan from April 1st, 1895, at the agreed rate of $6.25, up to the first of August, 1897.

Q. 22. Has the plaintiff paid to the defendant any part of the principal sum of $937.50 loaned to him by the defendant?

A. No.

Q. 23. Do you know the amount due from the plaintiff to the defendant on said loan at the time of the commencement of this action, and if so, state it?

A. There was due from the plaintiff to the defendant at the time of the commencement of this action, the principal sum of said loan, $937.50, together with interest and premium thereon at the rate of $6.25 per month, from and including August 1st, 1897, together with fines at the rate of twenty cents per share per month, since and including the month of August, 1897, so that the plaintiff was indebted to the defendant at the time this action was commenced for the principal sum of $937.50; for interest and premium from

August 1st to January 1st, 1898, five months at $6.25 per month, $31.25; and to fines at the rate of twenty cents per share per month, for said five months, amounting to $25, making a total indebtedness on said stock loan, of $993.75.

Q. 24. On the 10th day of January, 1898, when this action
60 was commenced, had the twenty-five shares of stock in question matured or reached their par value of $100 per share?

A. No.

Q. 25. What was the value of said shares at the commencement of this action on January 10th, 1898?

A. On certificate 4989, which represents ten shares of stock, the total value of said shares on January 1st, 1898, was $624.30; on certificate 4990, representing fifteen shares, the total value of the same on January 1st, 1898, was $936.45.

Q. 26. How do you arrive at the withdrawal value of the shares in question?

A. By computing the dues paid thereon, less the expense fund of ten cents per share per month, in accordance with section 1 of article II of the by-laws, and adding to that remainder its *pro rata* share of the earnings of the association.

Q. 27. Where can the by-laws of the association at the time the certificates in question were issued and the advance made thereon, be found?

A. In printed form on the back of said certificate.

Q. 28. For how many months has the plaintiff made stock payments of seventy-five cents per share upon the twenty-five shares of stock held by him in the defendant?

A. For seventy-eight months.

Q. 29. What is the total amount of the stock payments made by him for the seventy-eight months on the twenty-five shares of stock, at seventy-five cents per share?

A. $1,462.50.

Q. 30. Has the defendant, under its by-laws, from the monthly payments made by the plaintiff upon his shares of stock, deducted ten cents per share per month for the seventy-eight months for the expense fund of the defendant?

A. It has.

Q. 31. And how much does the expense-fund deduction of ten cents per share per month for the seventy-eight months upon the twenty-five shares of stock amount to?

A. $195.

61 Q. 32. Deducting the $195, expense fund from the total amount of installments paid, $1,462.50, what is the balance standing to the credit of the twenty-five shares of stock?

A. $1,267.50.

Q. 33. What dividends have been apportioned and credited to the plaintiff's stock up to the first day of January, 1898?

A. On certificate 4989 there was apportioned and credited in dividends to the plaintiff's stock January 1st, 1898, $117.30.

Q. 34. Since that time have any further dividends been apportioned and credited to plaintiff's stock certificate 4989?

A. Yes; on July 1st, 1898, there was a further dividend credited of $10.14. On January 1st, 1899, a further dividend of $10.14 was credited, and on July 1st, 1899, a further dividend of $7.61, making a total dividend on certificate 4989 up to July 1st, 1899, inclusive, of $145.19.

Q. 35. Now please state what dividends have been credited on plaintiff's certificate 4990, if any?

A. Dividends were credited on plaintiff's certificate 4990 as follows: On January 1st, 1898, $175.95; on July 1st, 1898, $15.21; on January 1st, 1899, $15.21, and on July 1st, 1899, $11.41, making a total of $217.78.

Q. 36. Has the defendant association credited the plaintiff's shares of stock with all the dividends which have been apportioned to it since he bought the same?

A. Yes; it has.

Q. 37. Has the defendant association held the plaintiff's stock as collateral security for the loan of $937.50 ever since the same was delivered to it for that purpose?

A. It has.

Q. 38. Has the plaintiff at any time filed his stock with the defendant at its office in Syracuse, N. Y., for withdrawal and offered to surrender the same and take the withdrawal value upon it, and if not, why not?

A. The plaintiff has never surrendered his stock to the defendant, or filed the same for withdrawal at the home office of the defendant in Syracuse, N. Y., for the reason that the plaintiff's
62 stock was pledged as collateral security for the payment of the loan of $937.50 which was made by the defendant to the plaintiff in April, 1895, and under the contract and under the articles of incorporation, the plaintiff could not withdraw such pledged shares before maturity without first having paid up the entire amount of his loan and thus releasing his shares from the security to which they were pledged.

Q. 39. You have stated that at the time of the commencement of this action the plaintiff's shares had not matured or reached their par value of $100 per share; have such shares matured since the commencement of this action, or had they matured on the 1st day of August, 1897?

A. No, sir.

Q. 40. On the 1st day of August, 1897, had the association paid all claims filed for withdrawal up to that time?

A. No, sir; it had not.

Q. 41. Please state in round numbers the amount of withdrawals on file which had been filed with the association for payment, and unpaid on August 1st, 1897.

A. There were unpaid withdrawals on file on August 1st, 1897, amounting to $428,957.72.

Q. 42. On January 1st, 1898, please state whether the withdrawals of other members of the association had been paid in full, and if so, please state the amount then on file and unpaid?

A. There were withdrawals on file with the association and unpaid on January 1st, 1898, amounting to $481,202.86.

Q. 43. From what moneys, and in what manner, are the withdrawals filed with the association paid?

A. From one-half of the monthly receipts from dues and stock payments.

Q. 44. Have the withdrawals which you have mentioned all been paid at this time?

A. No, sir; there are a large amount, probably $400,000, of withdrawals now on file and awaiting payment from one-half of the monthly receipts.

Q. 45. In what order are withdrawals paid?

A. In the order in which they are filed with the defendant.

63 Q. 46. Has the defendant applied one-half of the monthly receipts to the payment of withdrawals at all times since withdrawals commenced to be filed, whether before or since the first day of August, 1897?

A. It has.

Q. 47. Did the association at any time receive any notice from plaintiff that he desired to withdraw his stock and membership in the defendant or a demand of payment of his twenty-five shares of stock at $100 per share, less the amount of the loan which you have testified to?

A. Yes, on October 27th, 1897, the plaintiff sent a notice to the board of directors of the defendant through the mails, dated on the day named, at Darlington, South Carolina, and signed by the plaintiff, accompanied by certificate signed by George H. Edwards, dated the same day, certifying that the plaintiff was the owner of twenty-five shares of stock in the defendant; giving the number of the two certificates held by the plaintiff, and further certifying that the plaintiff had paid all dues claimed thereon by the defendant up to and including the last Saturday of July, 1897; that Mr. Charles A. Pooler, the secretary and general manager of the defendant should present and file at once with the defendant's board of directors, notice of withdrawal of stock; and demanding the payment of the amount due upon his shares. The amount demanded by the plaintiff was $1,562.50.

Q. 48. What was done with this notice and demand and certificate?

A. The notice and demand was refused by the defendant, on the ground that the shares of stock had not matured and reached their par value of $100 per share, and that the plaintiff had no right to withdraw his stock, for the reason that the same had been pledged as collateral security for the payment of the loan which he had received from the association in April, 1895, and notice to that effect was sent to him by the defendant by mail.

64 Q. 49. Has the plaintiff made any further payments on his stock or loan since July, 1897?

A. No, sir.

NATHAN C. VISSCHER.

Ex. "H."

D. A. PIERCE being duly sworn, deposeth and saith as follows:

I reside in the city of Syracuse, and am an attorney and counselor at law of the supreme court of the State of New York, and was admitted to practice in the courts of New York in 1884, and have been practicing law in said State ever since. I am the general attorney, and one of the directors of the defendant association and have been its general attorney since April, 1890. I am familiar with the laws of the State of New York regarding building and loan associations, and with the law applicable to the defendant. I have made said laws a special study in my relations to the defendant as its general attorney; my duties as such having practically taken all of my time during a number of years past.

The defendant is a corporation of the State of New York, organized in March, 1890, under chapter 122 of the Laws of 1851 of this State, as amended by chapter 564 of the Laws of 1875. There has been no change in the law of 1851, as amended by the law of 1875, so far as the fundamental acts and operations of associations incorporated thereunder are concerned.

I am familiar with the defendant's articles of incorporation and by-laws, and all their provisions. As one of the directors of the defendant, and as its attorney, it was a part of my duty to vote upon the question of the loan made to the plaintiff in this action of $937.50, in April, 1895, and to see that all papers in reference to the same were properly prepared and executed before the money was paid over.

65 Under the statute under which the defendant association is incorporated, and the defendant's articles of incorporation and by-laws, and the decisions of the courts of the State of New York, the clause in the defendant's certificate of stock issued to the plaintiff, is not to be construed or held as a guaranteed period of maturity, but, on the other hand, an estimated period of maturity and the association is not required to pay the face value of the certificates at the expiration of the seventy-eight months' period mentioned therein unless the amount paid by the plaintiff upon his shares of stock, augmented by the earnings apportioned and credited thereto, equal the par value of the shares. I base my opinion upon the statute under which the defendant is incorporated; its articles of incorporation and by-laws; the decision of the supreme court of the State of New York, in the case of O'Malley against The People's Building, Loan and Saving Association, reported in the 92nd of Hun, at page 572; the case of Heslin against this defendant, reported in 28 Miscellaneous Reports of the State of New York, page 376, opinion by Judge Gaynor of the supreme court of Kings county, N. Y.; and similar decisions of other States under like statutes, articles of incorporation and by-laws.

Q. 1. Do you know about the plaintiff's shares of stock, and whether or not they had matured on the first day of August, 1897, or at any time since?

A. Yes; I have examined the books of the defendant in reference to said stock, and know from them when he commenced to make his payments. the number of payments which he has made, the earnings apportioned and credited in dividends to his twenty-five shares of stock and that said stock had not matured on the day you name, and have not matured since. I have heard the testimony of Mr. Nathan C. Visscher, the assistant secretary and actuary, taken by deposition in this case, and his figures are correct according to the books of the association.

66 Q. 2. What do you say as to the management of the association having been conservative and prudent since your connection with it in 1890?

A. The affairs of the association have been carefully, conservatively and prudently managed ever since my connection with it, in every respect.

Q. 3. Have the net earnings of the association, at stated periods, been apportioned aud credited to the stock of all members alike?

A. The net earnings of the association have at stated periods, been apportioned and credited to all shares in good standing, in the same ratio.

Q. 4. Are the directors of the defendant shareholders in it, and if so, to what extent, and for what length of time they have been owners and holders of its stock?

A. The directors of the association, including myself, are owners and holders of $100,000 of its capital stock, which they paid for in cash, and have held the same since the first of May, 1894.

Q. 5. Have you an exemplified copy of the Laws, chapter 122 of 1851, and chapter 564 of the Laws of 1875, under which the defendant was incorporated?

A. I have an exemplified copy of said laws and hereby produce the same, certified to by the secretary of the State of New York.

Q. 6. Have you a certified copy of the original articles of incorporation of the defendant, together with any amendments made to the same; also a certified copy of the original by-laws of the association, together with any amendments made to the same?

A. I have, and produce the same, to be used as exhibits in this case by counsel for the defendant upon the trial as I am informed by our local counsel, Mr. T. H. Spain, of Darlington, that it is irregular under the practice of the courts of the State of South Carolina, to have them attached to and made a part of my deposition. The other papers mentioned by Mr. Visscher in his deposition, taken simultaneously with my own in this case, are not attached to
67 his deposition and made a part of the same, for the same reason.

D. A. PIERCE.

Ex. "I."

To the directors of the Eastern Building & Loan Association of Syracuse, N. Y.:

I hereby make application for loan of $937.50 (here state gross sum) on the security of the monthly payments made by me on certificates Nos. 4989 & 4990, and I hereby authorize and empower L. C. Crouch, of Syracuse, N. Y., for and in my behalf to bid a running premium of not exceeding the sum of 2 per cent. per annum thereon payable monthly, for the privilege of obtaining such advance. In addition to the foregoing, said loan to bear interest at the rate of 6 per cent. per annum, payable monthly. In consideration of said loan or advance being granted as aforesaid, I hereby agree to comply with the articles of incorporation, by-laws and regulations adopted by the board of directors of said association, and to execute such paper or papers as may be required by said board as a security for the repayment of said advance.

BRIGHT WILLIAMSON.

Dated April 1st, A. D. 1895.

Witness:
J. L. MICHIE.

Ex. "J."

Application for Advance.

To the board of directors of the Eastern Building & Loan Association of Syracuse, N. Y.:

Having obtained the preference for an advance of nine hundred and thirty-seven and $\frac{50}{100}$ ($937.50) dollars by stock loan on 25 shares of certificates Nos. 4989 and 4990 of your association, I now respectfully request the advance be granted. I hereby agree to
68 comply with the charter and by-laws of your association and all requirements defined by your committee of the board of directors.

BRIGHT WILLIAMSON, *Applicant.*

Witness:
J. L. MICHIE.

Ex. "K."

Whereas, I, the subscriber, being the owner of twenty-five shares of the stock of the Eastern Building and Loan Association of Syracuse, N. Y., have obtained a loan from said association of nine hundred and thirty-seven and $\frac{50}{100}$ dollars ($937.50) upon said shares, under, and in pursuance of, the constitution and by-laws of said association, which said constitution and by-laws are hereby referred to and made a part of this instrument.

Now therefore, for value received, and in consideration of the premises, I do hereby covenant and agree to and with said association, its successors and assigns, to repay to it or them, at its office in

Syracuse, N. Y., the aforesaid sum of $937.50 at or before the maturity of the aforesaid shares, together with the sum of six and tweny-five hundredths dollars ($6.25), the same being the interest and premium on said loan, payable at the office of said association on or before the first business day of each and every month hereafter until the aforesaid date of maturity, or until said principal sum is fully paid, with semi-annual interest on all sums due and unpaid, and also all fines that may be imposed pursuant to the by-laws of said association, and to keep and perform all promises and engagements entered into with said association according to the true intent and meaning of its by-laws and constitution.

And as collateral security for the payment of said indebtedness, and for the faithful performance of the covenants and agree-
69 ments herein, I do hereby sell, assign, transfer and set over unto the said association, its successors and assigns, all my right, title and interest in and to the aforesaid shares.

In case default shall be made in paying the principal, interest or instalment on said loan, or the regular monthly installments, fines or dues on said shares, or in the performance of any of the covenants or agreements herein, for a period of six months, then the whole sum hereby secured and agreed to be paid shall at once become due and payable at the option of the said association and without notice; and the said association may cancel, and treat as forfeited, the said shares and all payments made thereon. In case said shares and the payments thereon shall be forfeited and the net proceeds from the same shall be insufficient to pay said indebtedness, then I hereby covenant and agree to pay the deficiency.

In witness whereof, I have hereunto set my hand and seal this first day of April, 1895.

BRIGHT WILLIAMSON. [L. S.]

Ex. "L."

Articles of Incorporation.

Whereas, articles of incorporation of the Eastern Building & Loan Association of Syracuse, N. Y., were heretofore filed with the clerk of the county of Onondaga in the State of New York, under and in pursuance of an act of the legislature of the State of New York, entitled "An act for the incorporation of building, mutual loan and accumulating fund associations," and known as chapter 122 of the Laws of 1851 and the acts amendatory thereof, and

Whereas, certain informalities and omissions exist in the original certificate of incorporation,

Now, therefore, we, the directors of said corporation under and in pursuance of an act of the legislature of the State of New
70 York, passed April 5th, 1870, entitled "An act for the relief of corporations organized under general laws," do hereby make and file the following amended certificate of incorporation, viz:

Articles of Incorporation.

We, the undersigned, hereby associate ourselves together and agree to become incorporated under the provisions of the act entitled "An act for the incorporation of building, mutual loan and accumulating fund associations," and known as chapter 122 of the Laws of 1851, and the act amendatory thereof and supplementary thereto, under the name of the Eastern Building & Loan Association of Syracuse, N. Y., for the purpose of engaging in and carrying on business as hereinafter mentioned.

I.

The name of this corporation shall be the Eastern Building & Loan Association of Syracuse, N. Y.

II.

This association is formed for the purpose of purchasing real estate; for the erection of buildings or other improvement, and the improvement of lands; for aiding members in acquiring or improving real estate, or of removing encumbrances thereon by means of advances; for accumulating a fund for the benefit of members who do not obtain advances; and for the purpose of conducting the general business of a building & loan association and providing the advantages usually expected from savings banks and other institutions of like character.

III.

The principal place of business of this association shall be located at Syracuse, N. Y. But branches or agencies may be established and business done in any part of the State of New
71 York or in any State or Territory of the United States as the board of directors may direct.

IV.

The time of the regular meeting of this corporation shall be the second Monday in May of each and every year, and the special meetings may be called at any time upon the written call of a majority of the directors of this association, or of ten or more shareholders therein.

A quorum shall consist of not less than a representation of at least five hundred (500) shares of stock of said association; and not less than one-half the number of said directors in cases where a directors' meeting shall be found necessary.

V.

The qualification of members shall be as follows:

Any person upwards of twenty-one years of age, or parents or guardians of children, may become members of this association and shall become such upon subscribing for two or more shares of stock in this association as prescribed by the by-laws thereof.

VI.

The management of all the business of the association shall be vested in a board of nine directors who shall be chosen at each regular meeting. Said board shall have full power and authority to fill all vacancies, and make such by-laws, rules and regulations for the general management and conduct of the business of this association as they may deem necessary.

The officers of this association shall consist of a president, vice-president, secretary and general manager (combined), and treasurer, who shall be chosen by and from the board of directors at their first regular meeting after the annual meeting of the association; also an attorney, who shall at the same time be chosen by the board of directors from their number or from one of the stockholders. Said officers to receive the vote of a majority of said board present at any meeting. And said board of directors shall in the same manner, also designate a trustee, who shall be chosen at its first regular meeting.

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Any of the officers, the trustee and attorney of this association may be removed or suspended from office by a majority of the board of directors and a majority of the number of shares of stock of said association.

VII.

The duties of the said several officials shall be as follows: The directors shall pass upon the sufficiency of all property offered as security for loans and attend generally to the financial affairs of the association as provided by the by-laws to be hereafter adopted.

It shall be the duty of the president to preside at all meetings of the shareholders and of the board of directors; to sign certificates of stock and sign all releases of mortgages, and he shall perform all other duties pertaining to said office as provided by the by-laws to be hereafter adopted.

The vice-president shall perform all the duties of the president in his absence.

It shall be the duty of the secretary and general manager to attend all meetings of the shareholders and board of directors; to receive all moneys paid into the association and pay the same over to the treasurer and take his receipt therefor; he shall keep all accounts of the association; conduct all correspondence; sign all orders on the treasurer and sign all certificates of stock under the direction of the board of directors; whenever required by the board he shall submit a statement of the financial affairs of the association. The books of the association shall be kept by him and at all times be subject to the inspection of the board. He shall receive from the attorney, after being recorded, all deeds or other documents pertaining to the business of the association and make proper entry of the same in the books kept for that purpose. He shall attend to all printing and publication and have general supervision over all agents or agencies of this association, and any further duties as may be prescribed by the by-laws to be adopted.

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It shall be the duty of the treasurer to receive all moneys from the secretary and deposit the same in the name of the association in such bank as shall be designated by the board of directors. He shall keep correct account of all moneys received and paid out by him. He shall make to the board of directors when required a statement in writing of the full business of his office.

It shall be the duty of the attorney to examine all abstracts and records relating to the title of real estate offered as security for loans and certify in writing to the board of directors all facts that might affect the interests of the association in case such security may be accepted. He shall prepare all papers incident to making loans and secure loans by the association and cause them to be properly executed and such other duties as may be required by the by-laws of this association.

VIII.

All officers holding responsible positions shall execute to the association such bonds for the faithful performance of their duties as the board of directors may require.

IX.

The entrance fee of new members and new shares shall be one dollar ($1.00) per share of stock in said association. The monthly dues per share shall be seventy-five cents ($ .75).

There shall be a transfer fee of two dollars ($2.00) on each and every certificate of shares transferred.

74 The fines for non-payment of dues shall be ten cents ($ .10) on each and every share of stock unpledged, and twenty cents ($ .20) on all stock pledged for each and every month the payment may be in arrears.

In case a monthly payment on any share shall become past due and payable for a period of six months or more, such share shall be sold for the purpose of paying the arrearages. The proceeds of the sale shall first be used to pay all back monthly payments and fines and the balance remaining after paying all accrued fines and monthly payments shall be paid to the member in whose name the stock stands at the time of sale. If the stock brings no more than enough to pay the accrued fines and monthly payments, it shall be bid in by the association and cancelled and the amount standing to the credit thereof in the loan fund shall be divided among the other shares as profits.

X.

The advances or loans made to any member of this association shall not exceed the face value of the stock owned by him, and except as hereinafter stated shall be upon satisfactory first-mortgage, real estate security and be under such rules and regulations as the by-laws and the board of directors may require.

Loans may be made upon shares in good standing and in force one year to an amount not exceeding 90 per cent. of the monthly dues paid to the association upon such shares as collateral security

and upon such note, bond or other obligation or instrument as the board of directors and by-laws may require.

A uniform premium of 10 per cent. shall be paid and allowed by the borrower upon each loan; and upon all loans, the borrower shall pay interest at the rate of 5 per cent. per annum and a premium of 5 per cent. per annum as a redemption fee and the
75 same shall be paid on the last Saturday of each month during the continuance of said load at the principal office of the association. In case the monthly instalments on loans are not paid as aforesaid, then interest at the rate of 6 per cent. per annum, payable semi-annually, shall be collectable thereon; and in case default shall be made in the payment of the regular monthly instalments, fees or dues, the association may compel payment of principal, interest and premium, assessments, fees or dues, by proceeding upon the note or other obligation and mortgage, which shall at once become fully due and payable and the association may cancel and treat as forfeited the shareholder's shares of stock, whether deposited as collateral security or not, and all payments previously made thereon shall be forfeited to the association.

Pledged shares may be transferred upon consent of the association by transferring the mortgage security upon payment of the fee therefor provided all assessments, instalments, dues and charges thereon are paid to date and subject to such other regulations, if any, as the by-laws may provide.

Any shareholder may have his mortgage transferred or changed from one piece of property to another, by giving thirty days' notice in writing, the shareholder to pay all expenses incurred by the transfer of the same.

Loans may be prepaid and the mortgaged property released upon application to the association and giving thirty days' notice in writing of the intention. An equitable discount shall be allowed therefor to be determined by the board of directors.

XI.

Unpledged shares may be transferred upon consent of the association, upon payment of the fee therefor, provided all dues and claims thereon have been paid to date.

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XII.

Shares which are not pledged may be withdrawn before maturity provided the same are in good standing and all dues and fines have been paid to date. The association shall have the right to require at least thirty days' prior notice of intention to withdraw. Upon such withdrawal the holder will be entitled to receive thereon the amount of the monthly instalments that have been paid with such additional interest, if any, as the by-laws may provide, except that the same shall not exceed the net earnings of said stock. But in no event, shall the association be required to pay to withdrawing members more than one-half of the net receipts of the monthly instalments paid in during the month in which the withdrawals occur.

In no case shall a withdrawal from the loan fund exceed the amount of the instalments paid thereto, together with the estimated amount of the earnings upon the same.

XIII.

The association shall have the right to mature any shares of one year's standing and to issue in the place thereof paid-up certificates of shares payable at maturity with interest at the rate of 6 per cent. per annum or at maturity of stock in pledge payable at maturity of loan.

It shall also have the right to cancel any unpledged certificate of shares after it has been in force three years upon the payment to the holder of the total amount of instalments paid thereon, together with interest thereon at the rate of 8 per cent. per annum to date of cancellation.

XIV.

The qualification of voters at a meeting shall be that they shall be members in good standing as provided by the by-laws and
77 be entitled to one vote for each share of stock held. Voting shall be by ballot, and the highest number of votes shall elect.

Any member may authorize another member by written proxy to vote his stock at any one meeting, provided such proxy shall specify the particular meeting at which the same is to be used, and the same shall be filed with the secretary at the home office at least twenty days before the opening of such meeting. In all other cases, the proxy given with the application for stock shall be operative.

XV.

The amount to be paid to the owners of shares at maturity shall be one hundred dollars ($100) per share.

XVI.

The by-laws of this association shall not be amended except at an annual meeting of said association and by a majority vote of the stock outstanding.

XVII.

The amount of capital stock of this association shall be fifty millions of dollars ($50,000,000) divided into shares of one hundred dollars ($100) each as provided by the by-laws.

The funds of this association shall be divided into two classes, which shall be called respectively the loan fund and the expense fund. The expense fund shall consist of all admission, transfer, insurance, abstract and attorneys' fees, amounts paid for insurance or taxes on property on which loans have been made, fees, costs and disbursements of foreclosure, together with ten cents per share per month from the monthly payment on stock, and these funds so constituted shall be devoted to the payment of operating expenses and said insurance and taxes. The loan fund shall consist of all re-

ceipts which do not go into the expense fund as hereinbefore provided, together with all interests and accumulations from whatever source.

No money can be drawn from the loan fund for any other
78 purpose than the making of loans on security as provided by the by-laws and to pay amounts due withdrawing shareholders.

The funds of the association not required for advances on shares may be invested by the board of directors in such securities as the savings banks of the State of New York are permitted to take, or deposited at interest in the savings banks, trust companies or duly incorporated banks of said State and which are in good standing.

XVIII.

The stock of this association may be issued in series if the board of directors may so decide.

The directors of this association may enter into such contracts and agreements and appoint such agents for its business management as they may deem for the best interest of its affairs.

XIX.

These articles of incorporation may be amended at any annual or special meeting of the association, provided the same is previously endorsed by resolution of the board of directors and adopted by a majority vote of stock of the association.

Dated, Syracuse, February 22nd, 1890.

Ex. "M."

Articles of Incorporation of the Eastern Building and Loan Association of Syracuse, New York, as Amended at an Annual Meeting of said Association Held May 14th, 1894.

79 STATE OF NEW YORK, }
County of Onondaga. }

We, Henry H. Loomis, chairman, and William H. Emery, secretary of the annual meeting of the stockholders of the Eastern Building & Loan Association of Syracuse, N. Y., a domestic corporation, held at its office in Kirk block, Syracuse, N. Y., May 14th, 1894, commencing at 2 o'clock p. m., do hereby certify:

That a notice of time and place of holding such meeting was given by publication thereof, at least once in each week for two successive weeks immediately preceding the same, in "The Evening Herald," a newspaper published at the city of Syracuse, in the county of Onondaga, N. Y., where the principal business office of the said association is located, and a copy of such notice was mailed, postage prepaid, to each stockholder or member of said association at his post-office address as it appeared at the time on the books of the association, at least thirty days prior to the aforesaid meeting.

That at said meeting more than a majority of the stock of said

association entitled to vote, was duly represented in person or by proxy, that the undersigned, Henry H. Loomis, presided thereat as chairman under and by virtue of the by-laws and articles of incorporation of said association, and the undersigned William H. Emery, was duly chosen the secretary thereof; that at said meeting by resolution duly and unanimously adopted, the articles of incorporation of the said association were amended so as to read as follows:

Articles of Incorporation.

We, the undersigned, hereby associate ourselves together and agree to become incorporated under the provisions of the act entitled "An act for the incorporation of building, mutual loan and accumulating fund associations," and known as chapter 122 of the
80 Laws of 1851, and the acts amendatory thereof and supplementary thereto, under the name of the Eastern Building & Loan Association of Syracuse, N. Y., for the purpose of engaging in and carrying on the business as hereinafter mentioned.

ARTICLE I.

The name of this corporation shall be the "Eastern Building & Loan Association of Syracuse, N. Y."

ARTICLE II.

SEC. 1. This association is formed for the purpose of accumulating a fund for the purchase of real property; for the erection of buildings or other improvements and the improvement of lands; for aiding members in acquiring or improving real estate or removing encumbrances thereon by means of advances; for accumulating a fund for the benefit of members who do not obtain advances, and for the purpose of conducting the general business of a building and loan association, and providing the advantages usually expected from savings banks and other institutions of like character.

ARTICLE III.

SEC. 1. The principal place of business of this association shall be located at Syracuse, N. Y., but branches or agencies may be established and business done in any part of the State of New York, or elsewhre where no legal prohibition exists, provided the same shall be duly authorized by the board of directors.

ARTICLE IV.

SEC. 1. The annual meeting of the stockholders of the association shall be held on the second Monday in February in each year.

SEC. 2. A special meeting of the stockholders of the association may be called at any time upon resolutions of the board of
81 directors or upon a written request duly signed by stockholders in good standing representing not less than ten per cent. of the shares of stock in force.

SEC. 3. The stockholders present in person or by proxy at any annual meeting of the association shall constitute a quorum.

SEC. 4. Notice of all annual and special meetings shall be given as required by law and in such other manner, if any, as the by-laws shall prescribe.

SEC. 5. Every member of the association on whose shares or advances there shall be no arrearages of any kind at the time of voting shall be entitled to one vote for each and every share of stock standing in the name of the member for ten days immediately preceding any such meeting. Any member entitled to vote at any meeting may vote by proxy. The proxy given with the application for stock shall be operative in all cases; except that a proxy may be given for any one meeting provided the same shall specify the particular meeting at which it is to be used, and shall be filed with the secretary at the home office at least twenty days before the time appointed for such meeting, and such proxy shall be deemed to be suspension or revocation of the proxy given with the application for stock only for such particular meeting. All elections shall be decided by ballot, and any other question at any meeting of the stockholders may be decided by *viva voce* vote, unless objection shall be made thereto, in which event the question shall be decided by ballot.

ARTICLE V.

SEC. 1. Members may be admitted upon duly signed application for shares in the form required by the board of directors, provided the applicant shall be acceptable to the board of directors and shall have complied with the rules and regulations of the association.

Parents and guardians may take and hold shares in the asso-
82 ciation in behalf and for the use of their minor children or wards, if the cost of such shares is defrayed as required by law.

ARTICLE VI.

SEC. 1. The management of all the business of the association shall be vested in a board of nine directors, at least three of whom shall be elected by a plurality vote of the stockholders voting at each annual meeting. At least two-thirds of the directors shall be chosen from the stockholders owning not less than fifty shares each of fully paid stock, class A, after the same has been issued. At the first meeting of the directors after the annual meeting in 1894, they shall divide themselves by lot into three classes of three each, one of which classes shall serve for one year, one for two years, and one for three years, and they shall respectively hold office until their successors are elected.

SEC. 2. The officers of the association shall be a president, vice-president, secretary and treasurer, who shall be chosen by the board of directors at its first meeting after each annual election, and who shall hold office for one year and until their successors are elected. A general attorney shall also be chosen by the board of directors, and likewise, if deemed advisable, a general manager, and manager

of the loan department, who shall hold office for such time as the board of directors may prescribe. The president and vice-president must be chosen from the board of directors, and any two offices other than that of president and vice-president, may be held by the same person. Any vacancy in the board of directors or in any office shall be filled by the board of directors.

SEC. 3. An executive committee consisting of not less than three officers or directors, shall be chosen by the board of directors at its first meeting after each annual election. The members of said committee shall hold office for one year, or until their successors
83 are elected. Should any member of said committee be absent from any meeting thereof, the remaining members shall have a right to appoint a substitute for such absentee at such meeting from the other officers or directors of the association.

ARTICLE VII.

SEC. 1. The board of directors shall have the general management of all of the business of the association, and shall appoint such agents, assistants, employees, trustees and committees, enter into such contracts and agreements, fix salaries, and make such by-laws, rules and regulations not inconsistant with law as may be deemed necessary for the convenient and effective transaction of its business and for the best interest of the association.

SEC. 2. It shall be the duty of the president to preside at all meetings of the stockholders and board of directors; to sign all certificates of stock, and to perform such other duties as may pertain to his office as may be prescribed by the by-laws, board of directors or executive committee.

SEC. 3. The vice-president shall perform all of the duties of the president in his absence.

SEC. 4. It shall be the duty of the secretary to attend all meetings and keep correct records of all proceedings of the stockholders, board of directors and executive committee. Under the direction of the board of directors and executive commitee he shall keep all accounts and necessary books of the association, have charge of all papers and securities belonging to it, except as otherwise provided, sign all certificates of stock, issue all notices, conduct all correspondence pertaining to his department, have charge of the withdrawal or transfer of stock, see that all moneys paid in to the association are paid over to the treasurer and his receipt taken therefor, submit a statement in writing of the financial affairs or condition of the association whenever required by the board, and in general
84 perform such other duties as may pertain to his office or may be prescribed by the by-laws, board of directors or executive committee.

SEC. 5. It shall be the duty of the treasurer to receive all moneys paid in to the association, to give his receipt therefor and deposit the same to the credit of the association in such bank or depository as the board of directors may from time to time designate. He shall keep correct account of all moneys received and paid out by him, pay all orders in such manner as shall be prescribed by the

by-laws or board of directors, make a report in writing of the finances of the association and the full business of his office when required by the board of directors or executive committee, and in general perform such other duties as may pertain to his office or may be prescribed by the by-laws, board of directors or executive committee.

SEC. 6. It shall be the duty of the attorney to examine and pass upon all abstracts of title to property offered as security for advances and report thereon in writing, to prepare all papers incident to making sales or securing advances by the association and attend to the proper execution and record thereof, to deliver over to the association all papers pertaining thereto, to advise the officers and board of directors upon all legal matters that may arise, to have charge of all litigation of the association, and in general to do and perform all things incident to his office.

SEC. 7. It shall be the duty of the general manager, if appointed under direction of the board of directors and executive committee, to attend to all advertising, printing and publications, to attend to the proper and sufficient bonding of all agents, local and special, to have general supervision over all agencies, agents and local boards, to keep proper records thereof, to attend to the general interest of the association, to visit when required the various localities where the business of the association may from time to time be opened or established, to attend to all correspondence pertaining to his department, to report to the board of directors or executive committee when required, in writing or otherwise, any or all matters which may pertain to his department, and to perform such other duties as may be prescribed by the by-laws, board of directors or executive committee.

SEC. 8. It shall be the duty of the manager of the loan department, if appointed, under the direction of the board of directors and executive committee, to supervise all applications for advances by seeing that they are in a clear, concise and proper form, by acquiring full information regarding the security offered and the character of the locality thereof, the character and reliability of the appraisement thereof as well as any special appraisement if required, and the standing of the applicant; by seeing that the security offered is within the limit and of the character required; by seeing that all of the rules and regulations of the association have been complied with, and all such other matters furnished as will enable the application to be promptly, thoroughly and intelligently considered. It shall also be his duty to attend to the insurance of all properties belonging to the association or on which advances have been made on the security thereof, the payment of all taxes thereon, the collection of all moneys owing by borrowers, the collection of rents on property belonging to the association, and to keep all records and to attend to all correspondence pertaining to his department. He shall report to the board of directors or executive committee in writing or otherwise, when required, all matters pertaining to his department, and perform such other duties as may

be prescribed by the by-laws, board of directors or executive committee.

SEC. 9. The executive committee shall, subject to the control of the board of directors, investigate, pass upon and grant applications for advances or loans, audit and pass upon all claims against the association, supervise all expenditures and the making of all
86 contracts with agents, exercise general supervision over all business of the association between the meetings of the board of directors and make a report to the board at each regular meeting thereof, or at such other time as may be required.

SEC. 10. Any director or officer may be removed or suspended from office for misconduct or neglect of duty by a two-thirds vote of all the directors, after written charges shall have been preferred and a personal hearing granted in open meeting of the board.

SEC. 11. All officers, agents or employees holding responsible positions shall furnish the association with such bond or security for the faithful performance of their duties as the board of directors may from time to time require.

ARTICLE VIII.

SEC. 1. The capital stock of this association shall be fifty million dollars, divided into shares of one hundred dollars each.

SEC. 2. The stock of the association shall consist of shares of the maturity or par value of one hundred dollars each, to be known as fully paid stock classes A and B, paid-up stock and instalment stock, classes A and B, which may be issued in monthly series if the board of directors shall so determine.

SEC. 3. Installment stock shall mature and be payable when the dues paid thereon with the profits apportioned and credited thereto shall equal one hundred dollars per share. Paid-up stock shall mature and be payable when the dues thereon with the profits apportioned and credited thereto in excess of any cash dividends, if any, that may be paid, shall equal one hundred dollars per share; and unless otherwise provided all other stock shall be payable as provided by the by-laws or certificates of shares.

SEC. 4. The board of directors shall have the right to mature any instalment stock at any time after one year, and to
87 issue paid-up or fully paid stock in lieu thereof, and also to retire any stock issued excepting fully paid stock class A upon giving thirty days' written notice and paying to the holder the full value thereof, as the same appears upon the books of the association.

SEC. 5. All shares of stock redeemed, withdrawn or retired, and all shares matured and paid off in cash, shall revert to and become the property of the association and may be reissued by the board of directors.

ARTICLE IX.

SECTION 1. Upon fully paid stock class A there shall be paid in cash at the time of subscription and issuance of certificates, not less than one hundred dollars per share, but the first issue of said stock

shall not be less than one thousand shares. Such additional issue may be made from time to time as may be authorized by a two-thirds vote of the board of directors. And such stock shall be issued upon such terms, conditions and agreements as shall be provided in the certificates of shares.

SEC. 2. Upon fully paid stock class P there shall be paid at the time of subscription and issuance of certificate, one hundred dollars per share, but other classes in the discretion of the board of directors may be issued upon such terms as may be provided by the by-laws or certificate of shares.

SEC. 3. Upon paid-up stock there shall be paid at the time of subscription and issuance of certificate, seventy-five dollars per share, but other classes in the discretion of the board of directors may be issued upon such terms as shall be provided by the by-laws or certificate of shares.

SEC. 4. The monthly dues on the instalment stock class A shall be seventy-five cents per share, class B sixty cents per share, payable at such time and in such manner as the by-laws shall
88 provide, but other classes in the discretion of the board of directors may be issued upon such terms as shall be provided by the by-laws or certificate of shares.

SEC. 5. The entrance or membership fees unless otherwise provided by the by-laws or board of directors shall be one dollar per share.

SEC. 6. In case any instalment or dues on any certificate of stock shall not be paid when due, there shall be paid to the association on unpledged stock a fine of ten cents per share for each month the payment is in arrears, and on pledged stock there shall be paid a fine of twenty cents per share on each and every monthly payment in arrears. Should any dues or instalment become past due on any stock, such stock shall be retired and all payments thereon forfeited to the association, after sixty days from a personal demand made upon the member or stockholder in whose name the stock stands, or notices shall have been published as required by law, requiring such payment, unless such demand and notice shall have been waived, in which event such stock and the payments thereon shall be retired and forfeited after sixty days from the mailing of a notice to the member or stockholder of his address as it appears at the time on the books of the association, requiring such payment.

SEC. 7. In case any insurance premium or taxes on any property which may be pledged or mortgaged as security for an advance or loan to any member of the association, shall not be paid within one month after notice that such premium or taxes have been paid by the association, a fine at the rate of two per cent. a month shall be paid on such premium and taxes so long as the same shall remain unpaid by the borrower or his assigns, and such fine and premium and taxes shall be deemed to be secured, and collectable in the same manner as the moneys on any such advance or loan.

SEC. 8. Every share of stock shall be charged with any and all amounts that may be owing from the stockholder or his as-
89 signs to the association, for any dues, fees, fines, interest, premiums, or other indebtedness, and all certificates of stock

ni the association whether mentioned therein or not, shall be subject to a lien thereon to secure any such indebtedness, and the right to deduct and withhold the amount of such indebtedness, and to cancel such stock for the purpose of paying the same, is hereby expressly reserved to the association.

Article X.

Sec. 1. Upon consent of the association shares may be transferred, but no transfer shall be valid or binding upon the association unless the same is duly entered on its books and duly attested by its secretary, or a new certificate is issued in the place of the old, after the latter has been duly surrendered to the association. Shares on which advances have been made can be transferred only to the grantee of the mortgaged property. All transfers shall be subject to the right of the association, and no transfer shall be made until all arrearages and claims have been paid together with a transfer fee of fifty cents per share, not exceeding, however, two dollars for any one certificate. No stock shall be transferred upon the books of the association for thirty days prior to the annual or any special meeting.

Sec. 2. Instalment shares which are not pledged may be withdrawn before maturity, provided the same are in good standing and all dues, claims and fines thereon have been paid. Upon withdrawal the holder will be entitled to receive an amount not exceeding the monthly instalments paid, with such amount of the earnings apportioned thereto as may be provided by the by-laws or certificate of shares. Paid-up stock and fully paid-up stock class B may be withdrawn at any time unless otherwise provided by the by-laws or certificate of shares and the holder will be entitled to receive an amount not exceeding the stock payments thereon together with such
90 amount of the earnings apportioned thereto as may be provided by the by-laws or certificate of shares.

All certificates for withdrawals must be filed with the secretary of the association at the home office, properly receipted, and thirty days' notice of intention to withdraw may be required to be given therewith. Upon the filing of notice of withdrawal the payment of dues upon the shares shall cease and the withdrawal value thereof shall be calculated as of the date of the filing of such notice, but no interest upon the withdrawal value of the shares shall be paid. Payments shall be made in the order of the application for withdrawal, but the association shall not be required to pay out on withdrawing and matured stock more than one-half of the amount received from dues and stock payments in any month. A withdrawal fee of one dollar per share may be charged on instalment stock and may be deducted from the withdrawal value thereof.

Article XI.

Sec. 1. Advances or loans may be made to any stockholder of the association in good standing, provided the same shall not exceed the face value of the stock owned by the borrower, and shall be under such rules and regulations as the by-laws and board of directors may provide; but no loans shall be made upon fully paid stock class A.

Except as herein provided loans or advances may be made upon shares to an amount not exceeding the stock payments or monthly dues paid thereon, and all other loans shall be upon improved, unincumbered real-estate security. All shares upon which advances or loans are made shall be transferred to the association as collateral security, and in addition thereto the borrower shall execute a note or bond, and if the advance is upon real-estate security such mortgage deed of trust or other instrument, as shall be required by the by-laws or board of directors. All applications for loans shall
91 be examined and approved or rejected, by the board of directors or executive committee in their regular order, and unless otherwise provided all payments on loans shall be made monthly; each borrowing stockholder shall pay interest at the rate of not more than six per cent. per annum, and such premium as shall be bid on the advance or loan. The kind of premium shall be determined by the board of directors. If the security offered for the advance or loan is approved the same shall be granted to the applicant offering to pay the stipulated rate of interest and bidding the highest premium, unless the same shall be fixed by the board of directors, in which event all applications shall be acted upon in their turn. Where the same premium is offered by two or more members, those offering the best security shall be given the preference.

SEC. 2. Whenever the dues or monthly instalments on any shares upon which advances or loans have been made shall, with the earnings credited thereto, amount to the face value of said shares, the same shall be redeemed and shall be cancelled together with all securities given therewith, except where advances have been made on shares on the security thereof alone and the same has matured as aforesaid, the maturity or face value thereof shall be paid, less the amount of the advance made thereon, unless the advance or loan shall have been previously paid.

SEC. 3. In the discretion of the board of directors where advances are made on instalment stock with real-estate security, a release of such security and cancellation of such shares may be provided for in a definite number of payments, on account of dues, premiums and interest, provided, however, that the same shall be in such number and amount as to produce at least a profit requisite to mature the stock so borrowed upon, after paying its *pro rata* charge for expenses.

SEC. 4. Any stockholder may have the mortgage or real-
92 estate security transferred from one piece of property to another on giving thirty days' written notice; provided, however, the transfer shall be made only after the same examinations and appraisements have been made as in the case of an original loan, and upon the same terms and conditions. All expenses incurred on account of the transfer shall be paid by the stockholder.

SEC. 5. Should a stockholder whose property is mortgaged to the association desire to release the same by prepayment of the advance or loan, the same may be allowed on application to the association

at the home office on giving thirty days' written notice of such intention, and the prepayment shall be on such terms as shall be determined by the by-laws or board of directors. A redemption fee of one dollar per share may be charged on shares on which advances have been made.

Article XII.

Sec. 1. The funds of the association not required for advances on shares may be invested by the board of directors in such securities as the savings banks and trust companies of the State of New York are permitted to take, or deposited at interest in savings banks, trust companies or other duly incorporated banks of good standing in said State.

Article XIII.

Sec. 1. All moneys received by the association from dues, stock payments, interest, premiums, fines, admission fees collected in excess of agents' commissions for securing business or the equivalent thereof when no admission fee is charged, insurance, rents, taxes, fees, costs of foreclosure, transfer, withdrawal and redemption fees, abstract and attorneys' fees, as well as from all other sources, shall constitute the funds of the association, but such funds may be subdivided into such classes under such rules and regulations as
93 may be provided by the by-laws, or as the board of directors in its discretion may from time to time deem necessary in making the finances of the association in a prudent, thorough, safe and successful manner.

Sec. 2. The opening expenses of the association shall be only such as may be required in conducting its affairs in a wise, prudent and successful manner, and the same shall be paid from fees, dues and stock payments, or gross profits thereon; but shall not exceed the amount of the admission, transfer, withdrawal, redemption and other fees on shares; three dollars per share on paid-up stock and fully paid stock at the date of issue, and one-twelfth of one per cent. per month on the par value of said stock after the first year, and like proportions on each other class of paid-up or fully paid stock issued by the association; on instalment stock class A, one-tenth of one per cent. per month on the par value of said stock; and on each other class of installment stock issued by the association ratably in proportion to the dues paid thereon, provided, however, that in case no membership fee is charged on any class of installment stock, there may be used for operating expenses, in addition to the foregoing rate, at date of issue, from the first dues paid thereon, a sum not exceeding one dollar per share.

Article XIV.

Sec. 1. Upon fully paid stock, class A, there may be paid in cash semi-annually, or from time to time as the board of directors may provide, all of the earnings of which said stock may be entitled.

Sec. 2. Upon fully paid stock, class B, there may be paid from

the earnings in cash semi-annually or at such time as may be determined by the board of directors, a rate not exceeding 7 per cent. per annum, and such cash payment shall be in full of all claims to the earnings of the association or of said shares.

SEC. 3. The earnings to which paid-up and installment
94 stocks may be entitled, as provided, shall be reserved for the maturing of the same, provided, however, that upon paid-up stock there may be paid from the earnings such sum, if any, as the board of directors may from time to time determine.

SEC. 4. Except as otherwise provided, profits and losses shall be apportioned upon all shares in force in like proportion to the amount paid in thereon for the average time of investment.

ARTICLE XV.

SEC. 1. These articles may be altered or amended at any annual or special meeting of the association by a majority vote of the stock represented in person or by proxy, provided, however, that no alteration or amendment shall be made unless the same shall have been previously approved by the board of directors, or a notice specifying such alteration or amendment shall have been mailed at least thirty days prior to the meeting to each stockholder at his address as it appears at the time upon the books of the association.

Dated Syracuse, February 22d, 1890.

Ex. "N."

UNITED STATES OF AMERICA, }
State of New York. }

By John Palmer, secretary of State and custodian of the great seal thereof.

It is hereby certified that John Palmer was, on the day of the date of the annexed certificate and attestation, secretary of state of the State of New York, and duly authorized to make the same; that such secretary of state is the proper officer to make such certificate
95 and attestation and that the same are in due form; that the seal affixed to said certificate is the seal of office of the secretary of state of the State of New York; that the signature thereto of the said secretary of state is in his own proper handwriting, and is genuine; and, further, that the secretary of state is the custodian of the original law, so certified and attested, and custodian of the great seal of said State, hereunto affixed, and that full faith and credit may and ought to be given to his official acts.

[L. S.] In testimony whereof, the great seal of the State is hereunto affixed.

Witness my hand at the city of Albany, the 25th day of January, in the year of our Lord, one thousand eight hundred and ninety-eight.

JNO. PALMER,
Secretary of State.

CHAP. 122.

An act for the incorporation of building, mutual loan and accumulating fund associations.

Passed April 10, 1851.

The people of the State of New York, represented in senate and assembly, do enact as follows:

1. Any number of persons, not less than nine, may associate and form an incorporated company for the purpose of accumulating a fund for the purpose of real estate, the erection of buildings, or the making of other improvements on lands, or to pay off incumbrances thereon; or to aid its members in acquiring real estate, making improvements thereon and removing incumbrances therefrom, and for the further purpose of accumulating a fund to be returned to its members, who do not obtain advances as above mentioned, when the funds of such association shall amount to a certain sum per share, to be specified in the articles of association.

96 2. Such persons shall severally subscribe articles of association, in which shall be set forth the name of the corporation, the time of its regular meetings and how special meetings may be called, and what shall constitute a quorum to transact business at meetings; the qualification of members and how constituted; what officers, trustees and attorney there shall be, and how and when chosen, and their duties, and how removed or suspended from office; the entrance fee of new members and new shares, the monthly or weekly dues per share, the redemption fee on shares on which advances shall be made, and fees to be paid on the transfer of shares; the fines and penalties for non-payment of dues or fees, or other violation of the articles of association; the manner of redemption of shares by advances made thereon, the mortgaged security to be taken on such advances, and how the same may be redeemed or changed; the manner of the transfer or withdrawal of shares; the manner of investing funds not required for advances on shares; the qualifications of voters at the meetings, and the mode of voting; the ultimate amount to be paid to the owners of unredeemed shares; the manner of altering or amending the articles of association and such other provisions as shall be necessary for the convenient and effective transaction of the business thereof; provided that the same shall not in any respect contravene the constitution or laws of this State.

3. A true copy of such articles signed by the officers of the association, together with a statement showing when the association was organized, and the place of the transaction of its business, and the name of the officers and trustees at the time of the making such statement, which shall be verified by oath or affirmation before any officer authorized to take affidavits, to be used in courts of justice shall be filed in the office of the clerk of the county in which such association shall transact its business; and thereupon the persons who have subscribed, the articles of association as aforesaid, and

such other persons as shall become members of such as-
97 sociation and their successors shall be a body corporate, by the name specified in such articles of association, and shall possess the powers and privileges, and be subject to the provisions of title third of chapter eighteen of the first part or the Revised Statutes, so far as those provisions are consistent with the provisions of this act, and they shall by their corporate name, be capable in law of purchasing, holding, and conveying any real and personal estate whatever, which may be necessary to enable the said company to carry on their operation named in such certificate.

4. It shall be lawful for the trustees to call in and demand from the stockholders respectively, all such sums of money by them subscribed, at such times, and in such payments or instalments, as the articles of association shall prescribe, under the penalty of forfeiting the shares of stock subscribed for, and all previous payments made thereon, if payment shall not be made by the stockholder within sixty days after a personal demand or notice requiring such payment shall have been published for six successive weeks in the newspaper nearest to the place where the business of the company shall be carried on as aforesaid.

5. All corporations formed under this act shall have power to borrow money for temporary purposes not inconsistent with the objects of their organization; but no loan for such purposes shall have a longer duration than two years, nor shall such indebtedness exceed at any one time one-fourth of the aggregate amount of the shares and parts of shares and the income thereof, actually paid in and received.

6. Parents and guardians may take and hold shares in such association in behalf, and for the use of their minor children or wards, provided the cost of such shares be defrayed from the personal earnings of such minor children or wards, or by gifts from persons other than their male parents; married women may take and hold
shares in such associations, provided the cost of such shares
98 be defrayed from their personal earnings, the personal earnings of their children voluntarily bestowed for this purpose, or from property bequeathed or given to them by persons other than their husbands.

7. Every such corporation shall terminate except for the purpose of settling its affairs, whenever all the shares thereof shall be redeemed by advances thereon; or whenever the owners of unredeemed shares shall be paid the ultimate value thereof as provided in the articles of association and not sooner, but no dividend of principal or of profits shall be made until such termination; nor until all the debts of the association shall have been paid or otherwise sufficiently provided for. No holder of redeemed shares shall claim to be exempt from making the monthly payments provided in the articles of association upon the ground that by reason of losses, or otherwise, the association has continued longer than was originally anticipated, whereby the payments made on such shares may amount to more than the amount originally advanced with legal interest thereon; nor shall the imposition of fines for non-payment of dues

or fees, or other violation of the articles of association, nor shall the making of any monthly payment required by the articles of association, or of any premium for loans made to members be deemed to be a violation of the provisions of any statute against usury.

8. Any existing association, formed for the purposes mentioned in the first section of this act, may, on the vote of a majority of the voting shares, at any regular meeting, after the passage of this act, become entitled to the benefit of this act, on complying with the second and third sections thereof, unless the second section has heretofore been complied with; in which case it shall be necessary to comply only with the said third section.

99 9. No officer, trustee, attorney, agent or servant of any association hereby incorporated, shall use or dispose of any part of the funds of such association, or assign, transfer, cancel, deliver up or acknowledge satisfaction of any bond, mortgage or other written instrument belonging to such association, unless duly authorized or be guilty of any fraud in the performance of his duties; and every person guilty of a violation of this section shall be liable civilly to the party injured, to the extent of the damage thereby incurred, and shall also be liable to an indictment for a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court by which he shall be tried.

10. Each association formed under the provisions of this act shall, at the close of its first year's operations, and annually at the same period in each year thereafter publish in at least two newspapers published in the place where their business may be located, or if no newspaper shall be published in such place, then in any two newspapers published nearest such place, a concise statement verified on the oaths of its president and secretary, showing the actual financial condition of the association, and the amount of its property and liabilities specifying the same particularly.

11. All the shareholders of any association formed under this act, shall be individually liable to the creditors of said association to an amount equal to the amount of stock held by them respectively, for all debts contracted by such association. The directors or other officers of every association formed under this act, shall be personally liable for any fraudulent use, disposition or investment of any monies or property belonging to such association, or for any loss which shall be incurred by any investment made by such directors or other officers, other than such that are mentioned in and authorized by this act; but no director or other officer of any such

100 association shall be liable as aforesaid, except he authorized, sanctioned, approved, or made such fraudulent use, disposition or investment as aforesaid.

12. No person holding stock in any such company, or executor, administrator, guardian or trustee; and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such company, but the persons pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian or trustee, shall be liable

in like manner, and to the same extent as the testator or intestate, or the ward or the person interested in such trust fund would have been if he had been living and competent to act, and hold the same stock in his own name.

13. Every such executor, administrator, guardian or trustee shall represent the share of stock in his hands at all meetings of the company, and may vote accordingly as a shareholder; and every person who shall pledge his stock as aforesaid may, nevertheless, represent the same at all such meetings and may vote accordingly as a stockholder.

14. In case it shall happen at any time, that an election of officers shall not be made on the day designated by the by-laws of said company, when it ought to have been made, the company for that reason shall not be dissolved, but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided for by the said by-laws; and all acts of trustees shall be valid and binding as against such company, until their successors shall be elected.

15. The legislature may at any time alter, amend or repeal this act, or may annul or repeal any incorporation formed or created under this act, but such amendment or repeal shall not, nor shall the dissolution of any such company take away, or impair any remedy given against any such corporation, its stockholders or officers, for any liability which shall have been previously incurred.

101 16. Any company which may be formed under this act, may increase or diminish its capital stock by complying with the provisions of this act, to any amount which may be deemed sufficient and proper for the purposes of the corporation. But before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital.

17. Whenever any company shall desire to call a meeting of the stockholders for the purpose of increasing or diminishing the amount of its capital stock, it shall be the duty of the trustees to publish a notice signed by at least a majority of them, in a newspaper in the county, if any shall be published therein, at least three successive weeks, and to deposit a written or printed copy thereof in the post-office, addressed to each stockholder at his usual place of residence, at least three weeks previous to the day fixed upon for holding such meeting, specifying the object of the meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital, and a vote of at least two-thirds of all the shares of stock shall be necessary to an increase or diminution of the amount of its capital stock.

18. If at any time and place specified in the notice provided for in the preceding section of this act, stockholders shall appear in person or by proxy, in numbers representing not less than two-thirds of all the shares of stock of the corporation, they shall organize by choosing one of the trustees chairman of the meeting, and also a

suitable person for secretary, and proceed to a vote of those present, in person or by proxy; and if on canvassing the votes, it shall appear that a sufficient number of votes has been given in favor of increasing or diminishing the amount of capital a certificate
102 of the proceeding, showing a compliance with the provisions of this act, the amount of capital actually paid in, the whole amount of debts and liabilities of the company, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman, and be countersigned by the secretary; and such certificate shall be acknowledged by the chairman, and filed as required by the first section of this act, and when so filed, the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate.

19. The shares held by the members of all associations incorporated under the provisions of this act shall be exempt from sale on execution for debt, to an extent not exceeding six hundred dollars in such shares, at their par value.

20. No loan made by any such association to any of its members, may exceed in amount the par value of the capital stock for which such member may have subscribed.

21. The copy of any certificate of incorporation, filed in pursuance of this act, certified by the county clerk or his deputy, to be a true copy, and of the whole of such certificate, shall be received in all courts and places, as presumptive legal evidence of the facts therein stated.

22. This act shall take effect immediately.

Chap. 564.

An act to amend chapter one hundred and twenty-two of the laws of eighteen hundred and fifty-one, entitled "An act for the incorporation of building, mutual, loan and accumulating fund associations."

Passed June 9, 1875.

The people of the State of New York, represented in senate and assembly, do enact as follows:

Section 1. The seventh section of chapter one hundred and
103 twenty-two of the laws of eighteen hundred and fifty-one, entitled "An act for the incorporation of building, mutual, loan and accumulating fund associations." is hereby amended so as to read as follows:

7. The trustees of any association formed under the provisions of this act, may, from time to time, declare dividends from the earnings of the association, payable in such manner as may be provided in the articles of association, but no dividend shall be declared, except from the earnings of the association, and if the trustees of any such association shall declare and pay any dividend when the company is insolvent, or any dividend, the payment of which would render it insolvent, they shall be jointly and severally liable to the extent of the dividend so declared and paid, for all debts of the association

then existing or that shall be thereafter contracted while they shall respectively continue in office; provided, that if any of the trustees shall object to the declaring of such dividend or to the payment of the same, and shall at any time before the time fixed for the payment thereof, file a certificate of his objection in writing with the clerk of the company, and with the clerk of the county, he shall be exempt from the said liability. But no trustee who shall be present at any meeting when such dividend is declared, shall be exempt from such liability, unless he shall then and there object to the declaration or payment of such dividend, and shall also procure his objection to be noted in the book of minutes of such association. No holder of redeemed shares shall claim to be exempt from making the monthly or other stated payments provided in the articles of association, upon the ground that, by reason of losses or otherwise, the association has continued longer than was originally anticipated, whereby the payments made on such shares may amount to more than the amount originally advanced, with legal interest thereon; nor shall the imposition of fines, for the non-payment of dues or fees, or other violation of the articles of association, nor shall
104 the making of any monthly payment required by the articles of association or of any premium for loans made to members be deemed a violation of the provisions of any statute against usury.

2. Every corporation organized under the provisions of said act, and every corporation heretofore organized under the laws of this State for the purposes similar to those provided for in said act, shall annually make a full report in writing of the affairs and condition of such corporation, on the first day of January in each year, to the superintendent of the banking department in such form, and by such officers of the said corporation, as the said superintendent may designate, which report shall be in place of any report which any such corporation may now be required to make to the supreme court, the comptroller, or otherwise. Such report shall be verified by the oath or affirmation of the officers making such report; and any wilful false swearing in regard to such report shall be deemed perjury, and be subject to the prosecutions and punishments prescribed by law for that offense. Every such report shall be made within twenty days after the day to which it relates, and shall be in such form, and contain such statements, returns and information, as to the affairs, business, condition, obligations and resources of such corporation, as the said superintendent may, from time to time, prescribe and require. And the said superintendent may, if he be of opinion that it is desirable, require that a like report, either wholly or in part, as to the particulars aforesaid, be made to him at any time, by any such corporation aforesaid, within such period as he may designate.

3. It shall be the duty of the said superintendent, once in two years, either personally or by some competent person or persons, to be appointed by him, to visit and examine every corporation required by this act, to report as aforesaid. The said superintendent and every such examiner shall have power to administer an
105 oath to any person whose testimony may be required on any such examination, and to compel the appearance and attend-

ance of any such person, for the purpose of such examination, by summons, subpœna or attachment, in the manner now authorized in respect to the attendance of persons as witnesses in the courts of record of this State; and all books and papers which it may be deemed necessary to examine by the superintendent, or the examiner or examiners so appointed, shall be produced and their production may be compelled in the like manner. The expense of every such examination shall be paid by the corporation examined to such amount the superintendent shall determine. Whenever such examination shall be made by the superintendent personally, or by one or more of the regular clerks in his department, no charge shall be made on such examination but for necessary traveling and other actual expenses.

4. On every such examination inquiry shall be made as to the condition and resources of the corporation generally, the mode of conducting and managing its affairs, the action of its directors or trustees, the investment of its funds, the safety and prudence of its management, the security afforded to those by whom its engagements are held and whether the requirements of its charter and of law have been complied with in the administration of its affairs.

5. If it shall appear to the said superintendent from the report on any such corporation, or from any examination made by him, or from the report of any examination made to him, that any corporation has committed a violation of its charter or of law, or is conducting business in an unsafe or unauthorized manner, he shall, by an order under his hand and seal of office addressed to such corporation, direct the discontinuance of such illegal or unsafe practices and conformity with the requirements of its charter and of law, and with safety and security in its transactions, and whenever any corporation shall refuse or neglect to make such report as is herein-
106 before required, or to comply with any such order as aforesaid; or whenever it shall appear to the superintendent, that it is unsafe or inexpedient for any corporation to continue to transact business, he shall communicate the facts to the attorney general, who shall thereupon be authorized to institute such proceedings against any such corporations as are now, or may hereafter be provided for by law, in the case of insolvent corporations, or such other proceedings as the nature of the case may require.

6. If any such corporation shall fail to furnish to the superintendent of the banking department any report or statement required by this act at the time so required it shall forfeit the sum of ten dollars per day for every day such report or statement shall be so delayed or withheld, and the said superintendent may maintain an action in his name of office to recover such penalty, and when collected, the same shall be paid into the treasury of the State and be applied to the expenses of the bank department.

7. This act shall take effect immediately.

104–6–17–'97–200.

OFFICE OF THE SECRETARY OF STATE, } ss :
State of New York, }

I have compared the preceding with the original laws on file in this office, and do hereby certify that the same are correct transcripts therefrom, and the whole of said original laws.

[L. S.] Given under my hand and the seal of office of the secretary of state, at the city of Albany, this 25th day of January in the year one thousand eight hundred and ninety-eight.

JNO. PALMER,
Secretary of State.

107 Ex. "Q."

O'Malley *vs.* People's Building, Loan and Savings Association. Reported in 92 Hun. (N. Y.), 572.

LEWIS, *J.*:

"This action was brought to recover the sum of $500 claimed to be due upon a certificate of five shares of stock issued by the defendant to the plaintiff, of the par value of $100 a share. The principal question presented is whether the plaintiff is entitled to recover the par value of the shares, or whether his recovery shall be limited to the sum of $371, that being the amount, as claimed by the defendant, which the shares had earned at the time this action was commenced.

"The defendant is a building, loan and savings association. It was organized in the month of December, 1887, under chapter 122 of the Laws of 1851, entitled 'An act for the incorporation of building, mutual loan and accumulating fund associations,' and the acts amendatory thereof and supplemental thereto. Its principal office is in the village Geneva, Ontario county, N. Y. Its capital stock is $5,000,000, represented by 50,000 shares of the par value of $100 a share. It is provided by section 1 of the act of 1851 that any number of persons, not less than nine, may associate in forming an incorporated company for the purpose of accumulating a fund for aiding its members in acquiring real estate, making improvements thereon, and removing incumbrances therefrom, and for the further purpose of accumulating a fund to be returned to its members who do not obtain advances upon their shares of stock when the funds of the association shall amount to a certain sum per share, to be specified in the articles of association. The act provides for the filing of articles of association, which are to be subscribed by the members,
108 in which shall be stated, among other things, the amount of the entrance fee of new members and new shares, the monthly or weekly dues per share, the redemption fee on shares on which advances shall be made, the fines and penalties for non-payment of dues, fees or other violations of the articles of association, the manner of redemption of shares by advances made thereon, the mortgage security to be taken on such advances, how same may be redeemed or changed, and the ultimate amount to be paid to the owners of unredeemed shares. It was further provided by said act

that corporations formed under it shall have the power to borrow money for temporary purposes, not inconsistent with the objects of their organization, but no loan for such purposes shall have a longer duration than two years.

"Articles of association were duly subscribed and filed by the defendant. It is provided therein that persons, on becoming members of the association, shall duly subscribe a written application for shares desired to be purchased, and pay an admission fee of $1 on each share, and thereafter pay one dollar a month on each share, and in addition thereto the sum of 25 cents every three months. The scheme and plan of the association is, briefly, to issue its shares of stock to persons desiring to purchase the same, and with the moneys paid by the shareholders, and the fines and penalties which may be imposed upon the members, to accumulate a fund which, after paying the expenses of the association, is to be loaned or advanced to the holders of the shares of stock who may make application therefor, to the amount of the par value of the stock. The moneys advanced are to be secured by the bond of the applicant, and by a mortgage upon unincumbered real estate, conditioned to pay on the amount borrowed annual interest of 5 per cent. and in addition thereto a premium of 5 per cent. per annum, the interest and premium to be paid in weekly instalments, until the mortgage matures. The certificates of stock upon which advances are not made may be held by
109 the owner as an investment simply. The holder thereof is entitled to the dividends which may be made thereon from time to time. It is provided by the defendant's by-laws that any member, in lieu of paying the monthly and quarterly instalments, may, at the time of making application, pay $60 a share, and receive a paid-up certificate with a maturity face value of $100. The holders of these paid-up certificates are not liable for any admission fee, fines, or to the cancellation of their stock; and they may, upon the surrender thereof, withdraw the amount they have paid on the same at any time after three years from the date of issue thereof, and before maturity, together with annual interest of 6 per cent. The by-laws also provide that the directors may, in lieu of the admission and other fees, deduct from paid-up certificates 2 per cent. per annum on the maturity face value of the stock for the estimated period of five years, and place the same in the expense fund, to defray the expenses of the association.

"The purpose of the law, it will be seen, is to provide an opportunity for the people of limited means to invest a portion of their income, making payments in small sums from time to time, and thereby secure to themselves homes, which they might not be able to do if they were required to make their payments in large amounts. If the affairs of such association are conducted in conformity to the law and their articles of association and by-laws, the investments of the shareholders are reasonably safe; but if, on the contrary, they are improvidently and carelessly managed, they are quite sure to fail in their purpose.

"There was issued to the plaintiff, upon his written application therefor, on the 2d day of December, 1889, a certificate for five

shares of the defendant's stock. It was provided in the certificate that the plaintiff was constituted the holder of five shares of stock of the defendant, of $100 each, 'in consideration of the en-
110 trance fee, together with agreements and full compliance with the terms and conditions printed upon the back of this certificate, and the articles of association and by-laws adopted by the said association, all of which are hereby referred to and made a part of this contract.' The certificate further stated that the defendant agreed to pay said shareholder, or his heirs, executors, administrators or assigns the sum of $100 for each of said shares at the end of five years from the date thereof, or, in case of his death before the expiration of said term, then the sum of money equal to the amount of monthly instalments paid on the shares, together with all dividends which have accrued thereon, 'all of which are payable in the manner and upon the conditions set forth in the articles of association and by-laws, and terms and conditions printed on the back of this certificate.' The plaintiff in all respects complied with the rules and regulations of the defendant, and upon the expiration of the five years from the date of the certificate he presented it to the defendant, and demanded payment for its par value. The defendant declined to pay the $500, for the alleged reason that the shares had not then earned that amount, but stated that the amount they had earned was $371, which the defendant offered to pay to the plaintiff upon the surrender by him of the certificate. The plaintiff declined to accept the amount so offered and thereupon brought this action. The trial court construed the certificate to be an absolute, unconditional promise to pay the $500 upon the expiration of five years from its date, and directed a judgment accordingly.

"The main question presented by the appeal, as stated, is whether the plaintiff is entitled to recover the face value of the certificate, or shall his recovery be limited to the amount the shares have earned? If the language of the certificate alone is to be considered, there can be but little doubt that the decision of the trial court was
111 right. In construing this contract, the defendant's articles of association and by-laws must be considered as part of the contract, and given their proper effect. Gibbs *vs.* Bank, 83 Hun, 92, 31 N. Y. Supp. 406; *In re* Commissioners of Washington Park, 52 N. Y., 131. It is reasonably certain that if the construction contended for by the plaintiff is to prevail, it will thwart the scheme and purpose of the association, and probably bankrupt it. The plan of the organization contemplates that the holders of the certificates shall be entitled to share equally in its earnings. It is — mutual association. It cannot with any propriety be claimed that, under the defendant's articles and by-laws, it was contemplated that there should be any distinction in the time for the maturity of the shares of stock. The officers of the defendant, however, assumed to issue to the plaintiff a certificate which, upon its face, states that the company, at the end of five years, will pay to the holder thereof the sum of $100 a share. Plaintiff's payments were $13 a year on each share of his stock, amounting upon his five shares to $65 a year, and in five years to the sum of $325. Interest computed at 6

per cent. per annum on the payments from the time that they were respectively made until the end of the five years, amounts to between $45 and $46, which, added to the payments, makes $371, the amount which the defendant claimed the shares had earned, and which it offered to pay. If the plaintiff is entitled to recover the $500, his investment earned him from 22 to 23 per cent. per annum; an amount of interest which, if paid upon all certificates issued by the defendant, would in all probability bankrupt the association, a result which, it would seem, must have been apparent to the parties when the transaction took place.

"The plaintiff was presumably aware of the general plan of the association, for it was stated in his certificate that the articles
112 of association and the by-laws were to form a part of the contract, and, as stated, the general plan of the association contemplated that all the shareholders should be entitled to a *pro rata* share of its earnings. He must have been aware that it was not at all probable that the earnings of the association would be sufficient to pay the rate of interest which his construction of the contract calls for. It was not possible to know, at the time the certificate was issued to the plaintiff, when it would mature by the accumulation of dividends, for that necessarily depended upon the earnings of the association, and that could not be determined in advance. The dues, fees and penalties paid by the shareholders, with the interest and premiums paid by the borrowing members, make up and constitute the income of the association, and provide the fund from which the dividends upon the stock are paid. People *vs.* Preston, 140 N. Y., 549, 35 N. E. 979. The dividends can only be paid out of the earnings. Section 7, c. 122, Laws 1851, as amended by chapter 564, Laws 1875. If the five-year clause be construed as an estimated time for the maturity of the certificate, then the certificate conforms to the general scheme of the organization and to the statutes. The authority to issue a certificate with a fixed period of maturity is not expressly given, either by the statute or by the articles of association or by-laws of the society. We are of the opinion that the defendant did not possess the power or authority to issue a certificate containing a fixed maturity period, and that the clause in the certificate in question should be construed as an estimated period of maturity. The amount actually earned by the certificate at the time it was presented by the plaintiff for payment was only $371.

"The judgment should be reversed, and a new trial granted, costs to abide the event, unless the plaintiff, within 20 days, stipulates to reduce the recovery of damages to $371, and interest thereon
113 from December 2, 1894; and, in that event, the judgment be so modified and, as modified, affirmed, without costs of this appeal to either party.

"A like disposition should be made of the case of Church *vs.* Same Defendant, *infra*.

"All concur."

Ex. "P."

In the case of Englehardt *vs.* Fifth Ward Dime Savings and Loan Association, reported in 148 N. Y. (court of appeals), at page 281, it was held that the articles of association which showed the scheme of rights of members, are binding upon each member thereof. They establish the relation between the association and the stockholders, and constitute a contract between them.

Ex. "Q."

PEOPLE
v.
LOWE ET AL.

Reported in 117 N. Y., page 175.

(Court of Appeals of New York, Nov. 26, 1889.)

The Second Union Co-operative Land & Building Society, in January, 1868, was incorporated under "An act for the incorporation of building, mutual loan, and accumulating fund societies," passed April 10, 1851. Under section 1 of that act, any number of persons, not less than nine, can associate and form an incorporated company for the purpose of accumulating a fund for the purchase of real estate, the erection of buildings or the making of other improvements upon lands, or to pay off incumbrances thereon, or to aid its members in acquiring real estate, making improvements thereon, and removing incumbrances therefrom; and for the further purpose of accumulating a fund to be returned to its members who do not obtain advances, when the funds of such association shall amount to a certain sum per share, to be specified in the
114 articles of association. Section 2 provides that such persons shall severally subscribe articles of association, in which shall be set forth the name of the corporation, the monthly or weekly dues per share, the redemption fee on shares on which advances shall be made, the fees to be paid on the transfer of shares, the fines and penalties for non-payment of dues or fees or other violation of the articles of association, the manner of redemption of shares by advances made thereon, the mortgage security to be taken on such advances, and how the same may be redeemed or changed, the manner of investing funds not required for advances on shares, and other matters. Section 7 provides that every such corporation shall terminate, except for the purpose of settling its affairs, whenever all the shares thereof shall be redeemed by advances thereon, or whenever the owners of unredeemed shares shall be paid the ultimate value thereof as provided in the articles of association, and no sooner. Section 20 provides that no loan made by any such association to any of its members shall exceed in amount the par value of the capital stock for which such member may have subscribed. The articles of association adopted by the society provide, in article

2, that the object of the society is, by corporation, to enable its members to become their own landlords, by providing funds for each member to purchase real estate, and to make improvements thereon. Article 14 provides that all persons, on becoming members, shall pay an entrance fee of 50 cents for the first two shares, and 25 cents for each additional share; and that the subscription shall be 50 cents per week on every share of $1,000 held by any member. Article 16 provides that appropriations shall be disposed of by alternate ballot and open sale; that about two weeks before the money at bank is expected to amount to $1,000 an appropriation by ballot shall take place; that the member obtaining it shall receive $1,000 on each share held by him to be paid as soon as the money at the bank amounts to that
115 sum; that one other right of appropriation shall be sold the same evening, the amount to be sold to be fixed at $1,000; that the purchaser shall be entitled to the full amount of shares held by him at the same ratio; that it shall be sold to the highest bidder, the payment for the same, with no more than $250 premium for each $1,000 share, being extended over a space of ten years, and, should more than $250 premium be given per thousand, the amount over such sum shall be paid in cash; that the payment of all such appropriations being extended over a space of ten years shall go towards making up future appropriations, that a member having obtained an appropriation may select real estate, upon which he shall give a mortgage for the repayment of the sum advanced, such advance to be repaid at the rate of 10 per cent. per annum, in monthly instalments; that when the whole advance has been repaid he shall continue to pay his weekly subscriptions until he has paid the whole amount of subscription due. Article 24 provides that, when each of the members has obtained his appropriation, then, the object of the society having been accomplished, it shall cease to exist.

The shares of the corporation were $1,000 each and many persons became members thereof. The corporation had no actual capital, except the money accumulated from the weekly dues, fines and premiums on loans; and from this appropriation were made from time to time by ballot and sale, as provided in the articles, secured by mortgages. Prior to the 23d day of October, 1884, nearly all the members had taken appropriations, to wit, $1,000 for each share held by them and upon such appropriations they had made the payments required at the rate of 10 per cent. annually, and had also paid their weekly dues, and on the day last named there were 40 members still remaining in the society, 34 debtor members and 6 creditor members. On that day, at a special meeting regularly called, the following preamble and resolutions were adopted:
116 "Whereas, the Second Union Co-operative Land and Building Society of the City of New York has now fulfilled all the purposes for which it was created, and all the conditions wherein it was and is limited to determine having been performed save the passage of these resolutions only, and due notice of the same having been given to the members of the said society, be it

resolved accordingly that all weekly subscriptions be hereby discontinued, and that the said society be dissolved by the passage of these resolutions, and that its board of management on such dissolution shall immediately become its lawful successor for the purpose of winding up its affairs by collecting its debts, settling with its members and distributing its assets upon the following basis: (1) The creditors or unappropriated members, after paying their indebtedness to the society up to November 1st shall receive $700 each on each unappropriated share held by them, or any of them, in lieu of the share which such member might otherwise be entitled to receive of the assets of the society, and in full satisfaction of all claims upon and interest in the funds of said society. (2) Each debtor or appropriated member shall be credited with the full $350 on each share held by him (as his share of the society's surplus funds) and the same shall be offset against the member's indebtedness on bond or mortgage or otherwise to the society, the balance struck, and the members settled with accordingly. It is further resolved and provided, however, that $25 per share of the amounts to be allowed to both creditor and debtor members, as provided in the foregoing resolutions, shall be withheld, in settling with each member, to provide a fund for the payment of legal and other expenses incurred in winding up the society, and provide against a reduction of the estimated amount of the assets upon which the foregoing calculation is based, by reason of the failure of the board of management to collect all of the debts due to the society, the $25 per share so withheld to be paid to the member upon final settlement of the society's
117 affairs, less such deficiencies as may be charged to the same by reason of the aforesaid. Be it further resolved, that the board of management shall be authorized and empowered to employ competent counsel to bring such suits and to perform such legal services in winding up the said society as the said board may deem necessary, and to pay for the same out of the funds—society funds in their possession. Be it further resolved, that the board of management shall be authorized and empowered to employ a clerk to attend to the clerical duties of the board, with a salary to be fixed by the board."

At that time the members had paid in dues the sum of $442 upon each share, and the property of the society, consisting mainly of mortgages given by the members to secure appropriations made to them, amounted to $30,000, which, if then divided among 82 shares, the whole number then existing, would have given to each share $365. Under these resolutions the board of managers proceeded to wind up the affairs of the society, and had, prior to the commencement of this action in April, 1887, settled satisfactorily with all the members, and received releases from them, except five, three of whom were debtor members, and two creditor members. In the month last mentioned, at the instigation of these members, or of some of them, this action was commenced by the attorney general. In the complaint various acts of misconduct on the part of the defendants were mentioned, and it is charged that the resolutions re-

ferred to, excepting so much of them as declared the dissolution of the society, were contrary to the articles, the by-laws, and the plan of operation of the society, and were only passed for the purpose of enabling the defendants to carry out their fraudulent scheme of securing to themselves unlawful dividends and profits, and to invalidate the provisions contained in the articles, and a judgment is demanded that the resolutions, in so far as the same provide for the distribution of the assets of the society, be declared null and
118 void and of no effect; that the individual defendants be compelled to account for their official conduct in the management and disposition of the funds and property of the society; that they be adjudged to pay back into the fund of the society all the monies illegally paid out by them for or on account of unlawful dividends, and all monies lost to the society by their neglect to collect the dues, fees and fines, which were owing by the defendants and others, and all monies collected by them in pursuance of the resolution above set out; that the individual defendants be removed and suspended from exercising their office as officers of the society, and that they be enjoined from receiving any debt or demand owing to the society, or from prosecuting any of the foreclosure suits commenced by them against members of the society, or in any way interfering with any of the funds of the society, or from delivering to any one any money, property, or effects of the society, and that it be declared dissolved; that a receiver of its property be appointed by the court, with the usual powers of such receivers in like cases, and that such receiver be directed to pay the creditor members of the society $1,000 on each share, and that the mortgages executed by members of the society be declared discharged, except as to subscription and redemption fees, which became due before October 23, 1884.

The action was put in issue by the defendants, and brought to trial at a special term, and the trial judge found, as facts, the organization of the corporation; the adoption and filing of the articles of association; that on the 23d day of October, 1884, the society could pay to each creditor member the sum of $1,000 upon every share held by such creditor member, and could be dissolved in accordance with the plan of the organization; that the individual defendants caused the society to call a special meeting, at which meeting the resolutions above mentioned were adopted; that a minority of the members protested against the resolutions; and that they had committed various acts of misconduct men-
119 tioned. And he found, as conclusions of law, among other things, that according to the provisions of the by-laws, the debtor members of the society were required to pay the redemption fees upon their mortgages up to the time when the society ceased to exist; that the society was required to remain in existence until it could pay to each creditor member the sum of $1,000 upon each unappropriated share; that the resolutions of October 23, 1884, were so far as they assumed to make a disposition of the property and assets of the society, illegal and void; that the dividend of $350 payable to the debtor members, as stated in the resolutions,

had not been earned, and was illegal; that the attempt by the individual defendants to appropriate to themselves as debtor members the illegal dividend and the payment thereof to such debtor members, was a violation of their duty as trustees of the society; that the defendant further violated their duty as trustees of the society in omitting to collect the fines due to the society, in demanding of the various debtor members payment of the amounts claimed to be due upon their mortgages to the society, and omitting to make reports of their proceedings to the society. And he found that the plaintiffs were entitled to judgment declaring the society dissolved, removing the individual defendants as trustees, and appointing a receiver, with the usual powers, to distribute the assets and property of the society, and to execute satisfaction pieces of the mortgages made by members who had paid the amounts which had become due thereon up to October 23, 1884.

Judgment was entered in accordance with the decision, in which a receiver of the property and assets of the society was appointed, who was ordered, upon receiving upon any of the mortgages held by the society the amounts due from the mortgagors for redemption fee, and fines which became due and payable to the society up to and prior to October 23, 1884, to execute to the mortgagors
120 full certificates of satisfaction of said mortgages, and cancel the same and the bonds accompanying them. And that they should pay the two creditor members of the society $1,000 each, with interest from October 23, 1884, deducting, however, any amount which might be owing by them for dues and fines prior to that date. And it was further adjudged that the plaintiffs recover the costs of the action, together with an allowance of $500 against the individual defendants, amounting in all to $677.65. From judgment thus entered the defendants appealed to the general term, where the judgment was modified, and affirmed as modified, and from the judgment of the general term both parties appealed to this court, the plaintiffs from the modifications thereof only.

EARL, J. (after stating facts as above):

"This society, at the time of its organization, had no capital, the shares were for $1,000 each, and each member was required to pay a weekly subscription of 50 cents on every share held by him, and the actual capital was to consist of the money thus contributed. The scheme clearly was that these contributions were to continue until the society had a cash capital of $1,000 for each share, and then it was to come to an end. As fast as a sufficient amount was thus contributed, it could be borrowed by the members. Any member could borrow or take $1,000 for every share held by him, which he was required to secure by a real-estate mortgage, upon which 10 per cent. should be paid annually in monthly installments until the whole amount should thus be paid. The member taking what was called 'appropriations,' or, in other words, borrowing money in this way, was not required to pay any interest thereon, but was simply required to pay his weekly dues and his monthly installments. A member might borrow $1,000, if appropriated

to him by ballot, or, if not so appropriated, he might obtain that amount by bidding for same, and paying the highest
121 premium offered, and the premium thus paid went into the funds of the society. As according to the scheme of the society, every member could obtain, on terms of equality with all other members, an appropriation of $1,000 for every share held by him, there was no substantial injustice in allowing the members, who took their appropriations, to have the money without interest. There was no provision in the articles of association, or in the mortgages, which entitled the debtor members to have their mortgages cancelled without payment. Every member was to stand upon an equal footing—the debtor and creditor members. If the scheme was carried out, every member would receive, at the termination of the society, $1,000 for each share held by him; that is, the creditor members would be paid that sum, and the debtor members would receive such a sum of money as, together with the amounts then unpaid upon their mortgages, would make to each of them $1,000 per share. But the scheme was not carried out. The society was continued until the weekly contributions, instead of making a fund of $1,000 for each share, had made a fund of only $442, or even less, and while the society was in that condition, by the act and acquiescence of all its members, it came to an end, and thus the scheme to some extent was frustrated. It is the theory of the complaint, and the decision of the court below, that the society was dissolved on the 23d day of October, 1884; but the rule of equality must nevertheless prevail among the members. Each member, for each share held by him, was entitled to precisely the same amount in the assets of the society, and such assets should be distributed accordingly. Those who are debtors, if they owed more than their distributive shares of the assets, should pay the balance to the society, and upon such payment should have their mortgages cancelled. If they owed less than their distributive shares, they should have their mortgages cancelled, and receive the balance so as
122 to make them equal with the creditor members. The claim made on behalf of the people, and the five members represented by them in this case, that the three debtor members were entitled to have their mortgages cancelled without payment, and that the creditor members were entitled each to have $1,000, is utterly without any foundation; and the counsel for the defendants has a proper conception of the rights of his clients when he claims that, in winding up the affairs of the society, the trustees are bound to distribute its assets among its members equally, according to their respective shares. The only error, therefore, apparent, in the resolutions under which the individual defendants were proceeding, was in ordering that $700 per share be paid to each of the creditor members, and $350 per share to each of the debtor members. So far as appears in this record, there was no authority for paying a creditor member a larger distributive share than was paid to a debtor member. It is true that a debtor member may have borrowed money without the payment of interest, but that was his contract, and that was the scheme of the society, and he cannot be

required, in the settlement of its affairs, to make any allowance whatever for interest. If he pays, or is charged with the principal due upon his mortgage, he has discharged his whole duty to the society as debtor. In other respects he stands upon a footing of precise equality with the creditor members. Upon the trial the defendants attempted to explain why they made the difference in the payments of $700 to the creditor members and $350 to the debtor members, and upon objection, they were prohibited from giving the proof.

"But the people, and the five members represented by them, have not complained that the creditor members have been paid or will be paid too much, but their claim is that they have not been paid or offered enough, and they have made no complaint
123 that the amount appropriated for the debtor members is too small, but their claim is that they ought not to be paid anything, and that their mortgages should be absolutely satisfied. It may be that facts exist which would now preclude them from objecting to the appropriation and distribution which has been provided for in the resolutions, and made in pursuance thereof. The three debtor members still remaining who are represented by the plaintiffs in this action received their appropriations but a few months previous to the passage of the resolutions, and they have paid upon their mortgages but a small percentage, and yet their claim is that because the society has come to an end, although prematurely, they are absolutely entitled to have their mortgages cancelled without payment. No claim could be more preposterous, and there is no justification for it in the law or in the articles of association of the society.

"A careful scrutiny of this case fails to disclose to us any proof of any fraud or misconduct on the part of these defendants. With the exception of the discrimination which they made between the debtor and creditor members, of which no one has complained, they were proceeding to wind up the society in precise accordance with the law applicable to the facts. It does not appear that they had taken a dollar to which they were not entitled, or that they had paid any one a dollar to which he was not entitled. They had remitted or failed to collect some fines, but according to the practice of the society, and within a reasonable discretion vested in the trustees or managers of the society, they must have had power to remit and condone fines. They had power also, to settle with the defendant Lowe, who had bought real estate of the society, and given back a mortgage for the purchase price, which he was unable to pay. He offered to surrender the property if the society would take it, and the trustees, in the exercise of a reasonable discretion, made
124 a deduction of $700 from his mortgage in case he would pay the balance, and thus reduce his indebtedness to the actual value of the property. Nothing whatever was lost to the society, so far as the case discloses, which could have been saved by any other procedure. Therefore, assuming that the attorney general in the name of the people could commence and maintain this action, there does not seem to have been, so far as this record discloses, the least

ground for doing so. No public right or interest was involved, and no interest whatever except those of the five members, who were all claiming more than they were entitled to, and making charges of misconduct against trustees which, so far as the record discloses, had not the least foundation in fact. The litigation has been most disastrous, entailing large costs and expenses, not only in this action, but by reason of other actions commenced in the name of the receiver, in all probability consuming and wasting most, if not all, the remaining assets of the society. These views lead to a reversal of the judgment."

Ex. "R."

In the case of Concordia Savings and Aid Association against Read *et al.*, reported in 93 N. Y., (court of appeals) at page 474, the action was brought to foreclose a mortgage executed by defendant Meier to the plaintiff to secure a bond conditioned for the payment of the sum of $1,850, as follows: $3.75 contribution, and $2.25 interest, each and every week during the existence of the association, and also all dues, fines and penalties. The mortgage provided that if the contributions, interest, dues and penalties specified, should remain due and unpaid for three months, then the whole sum, with interest, and all dues, fines and penalties owing by Meier to the association should be deemed due and might be collected.

125 The plaintiff in this case was incorporated as a mutual loan and accumulating fund association under an act of the legislature of the State of New York, passed April 10th, 1851, and it was shown that Meier was a member of the corporation. Article seven of the constitution provides that "every member receiving a loan from the association binds himself to pay the weekly contribution of twenty-five cents and fifteen cents interest, for every share so received, and for such time as shall be required to pay the holder of every share $125, including the premium allowed by such shareholder;" and article 23 provided that if each and every member should have received for each and every share the sum of $125, deducting therefrom the premium paid by his own consent, then the association should cease and determine, and all mortgages and other securities should be discharged.

The claim on behalf of the defendant was that Meier was bound to pay upon his bond and mortgage his weekly dues and interest only until the association had received money enough to redeem all the outstanding shares, and that it was incumbent upon the plaintiff to prove that there were shares outstanding and the amount required to redeem, and the court said:

"We think the proof was *prima facie* sufficient. The plaintiff was roganized April 1st, 1876, and the number of its shares was limited to one thousand, at $125 each. A number of persons signed the articles of association, and they must have been shareholders. The association had received money enough from the dues of its members to make the advance to Meier, secured by his bond and mortnage in August thereafter, and hence there must have been a large gumber of members who paid dues upon shares held by them. To

furnish a fund for the redemption of shares, each member paid for each share held by him the weekly sum of twenty-five cents.
126 Thus there would be paid upon each share $13 every year, and if nothing but the dues were paid by members it would take more than nine years to accumulate funds sufficient to redeem all the shares. If the interest, premiums, fines and penalties received amounted to more than sufficient to pay the losses and expenses of the association, the shares could be redeemed in less time. Here Meier stopped making payments on his bond and mortgage, or as a member of the association, on the 11th day of June, 1877, less than one year after he obtained the money, and this suit for the foreclosure of the mortgage was commenced in July, 1878, less than two years after he obtained the money. Hence, by no possibility could money enough to redeem the shares have been received by the association from its members in June, 1877, or July, 1878. The evidence was sufficient to throw upon the defendant the burden of showing that all the outstanding shares had in some way been redeemed so as to entitle Meier to have the mortgage discharged.

"It matters not whether the moneys secured by the bond and mortgage be called, as it is in the constitution of the company, a loan to Meier, or simply an advance upon his shares. The bond and mortgage were given to secure the repayment of the money in the manner and upon the terms therein mentioned, and it is clear that the money became payable. No material error was committed by the trial court in the computation of the amount due upon the mortgage. The mortgage was given to secure the payment of the precise sum advanced or loaned to Meier, to wit, $1,875. It is true that at the time the mortgage was given, Meier did not carry away with him the full sum of $1,875. The constitution of the association provided that in case there are several members applying for a loan at the same time, said loan shall be given to the member paying the highest premium therefor to the benefit of the association.
The taking of a premium in such case is sanctioned by the
127 act of 1851, as amended by chapter 564 of the Laws of 1875, and does not render the loan usurious.

"Meier paid for this loan a premium of $630, and that sum was paid out of the $1,875, and the balance only was actually paid to him, but the whole sum was loaned or advanced, and out of it he paid the premium which went into the treasury of the association for the benefit of all the shareholders, Meier included. The scheme of the association, as embodied in the law of its creation, and in the bond and mortgage, was that this sum could be paid back by weekly dues of 25 cents per share to apply on the principal, and 15 cents per share for interest, and if these payments were made, also all fines and penalties imposed upon him as a member, then his bond and mortgage were to be void, and all payments were in any event to cease as soon as enough money had been contributed by all the members to redeem all the shares, but in order to have the benefit of these gradual, deferred payments, it was incumbent upon Meier to make them as they fell due and to remain a member of the association by the payment of his dues, interest,

fines and penalties. If he did not make these payments, then he was to pay back the money which was advanced to him, and so it is provided in the bond and mortgage.

"This is not a case where a larger sum is made payable in consequence of the non-payment of a smaller sum, and payment of a large sum is not imposed as a penalty. But this is a case where the whole of a specified sum becomes due because the partial payments are not made as stipulated, and the principles of law which authorize courts of equity sometimes to relieve from forfeitures do not apply to such a case as this.

"It is stipulated in the mortgage that if the contributions, the interest, dues or penalties herein specified shall at any time remain due and unpaid for the space of three months, then and in that case the whole sum of $1,875, and the interest due thereon,
128 and all dues, fines and penalties owing by said Meier to said association by the terms of the constitution, rules and regulations thereof, shall be deemed due and may be collected. Therefore, the trial court did not err in taking the sum of $1,875 as the basis of its calculation, and no substantial error was committed in arriving at the sum for which the judgment was ordered, and therefore the judgment should be affirmed with costs."

Defendant's Requests to Charge.

I. I charge you that the contract is to be governed and construed by the laws of the State of New York, as the contract was made there and was to be performed there.

II. I charge you that what the laws of New York are, are facts for you to find, and that full faith and credit are to be given those laws under art. 4, sec. I, of the Constitution of the United States and section 905 of the Revised Statutes of the United States.

III. I charge you that if you find that the defendant was incorporated under chapter 122 of the Laws of 1851 of the State of New York, and the acts amendatory thereof, that said laws are to be given in this court the same faith and credit as they have by law or usage in the courts of New York, in accordance with the provisions of section 905 of the Revised Statutes of the United States.

IV. I charge you, that if you find from the evidence that the defendant was incorporated under chapter 122 of the Laws of 1851 of the State of New York, and the acts amendatory thereof, and if you further find that the courts of New York have construed said laws, thereby holding that a corporation duly incorporated under themw as a "building, mutual loan and accumulating fund association," in which all of its members stand on the same footing, and each sharing equally in the profits and losses, then I
129 charge you that the same construction is to prevail in this case, under art. 4, sec. I, U. S. Constitution; and sec. 905 of the Revised Statutes of the United States.

V. If you find, that the defendant association was incorporated under the chapter 122 of the Laws of 1851 of the State of New York, and the acts amendatory thereof, and as the plaintiff con-

tracted with the defendant, then I charge you that he is bound by such laws and is not exempt from making the monthly or other stated payments, provided for in the articles of incorporation and by-laws upon the ground of having made a fixed number of monthly payments regardless of the fact whether such payments and the earnings of the defendant have brought the plaintiff's stock to the par value of $100.00 per share.

VI. If you find that the defendant was incorporated under chapter 122 of the Laws of 1851 of the State of New York, and the acts amendatory thereof, and if you further find that the said statutes and amendments were construed by the supreme court of New York in a case entitled O'Malley *vs.* The People's Building, Loan & Savings Association, then I charge you that the defendant did not possess the power to issue a certificate containing a fixed period of maturity, and it cannot be enforced against the defendant in this court, as an unconditional promise to pay $100.00 per share at the expiration of 78 fixed monthly payments, as full faith and credit must be given the laws of the State of New York, under art. 4, sec. I, U. S. Constitution, and sec. 905 of the Revised Statutes of the United States.

VII. I charge you, that under the terms of the contract of membership, and the contract of loan, by-laws, and charter, the transaction between the plaintiff and defendant, does not terminate, merely upon making a fixed number of payments, but only when the dues paid in by him, with the profits apportioned to his shares, make them equal their par value of $100.00 per share.

130 VIII. I charge you, that as the plaintiff procured an advance or loan from the defendant, and having assigned his stock, as collateral security therefor, cannot withdraw from the association, as he contracted to remain a member until his stock reaches its par value of $100.00 per share.

IX. I charge you, that it is incumbent on the plaintiff to prove by a preponderance of testimony that the earnings of the defendant *has* matured his stock, before he can recover judgment against the defendant.

X. I charge you, that the plaintiff cannot estop the defendant for what he said on the face of the certificates and literature relative to stock maturing tn 78 months as said statements related to a future fact on which no legal reliance could be placed.

XI. I charge you, that one of the elements of an equitable estoppel is, that the party setting it up must have been induced to change his position to his injury by the party against whom it is set up, and if you find what is said about stock maturing in 78 months, would be to the advantage of the plaintiff, then he cannot estop the defendant.

XII. I charge you, that as the plaintff procured the amount borrowed under the by-laws as he alleges, and as his contract of loan made the by-laws and charter a part of said contract, that he is estopped from claiming under them and against them at the same time, and that he is not exempt from making the monthly payments, as they provide, until the amount of dues paid in by

him plus his *pro rata* share of the profits have brought his stock up to its maturity value of $100.00 per share.

XIII. I charge you, that as the plaintiff has sued on the contract and clings to the benefits thereof, to wit: the amount borrowed, that he is estopped from setting up any alleged misrepresentations made to him by the defendant which (as alleged) induced him to enter into the contract.

131 XIV. If you find that at the commencement of this action that the defendant did not have money in its treasury applicable to plaintiff's claim then you will find for the defendant.

XV. I charge you, that the plaintiff was charged with notice of the provisions and requirements of the articles of incorporation, by-laws and the laws of New York under which the defendant was organized and conducted its operations.

Charge.

MR. FOREMAN AND GENTLEMEN OF JURY: This is a suit brought by Mr. Bright Williamson, as plaintiff, against the Eastern Building & Loan Association of Syracuse, N. Y., as defendant. It is a suit, briefly putting it, by this plaintiff on a contract which he sets up and relies upon, and upon which he seeks to recover from defendant.

The discussion has taken a very wide range in the argument about the certificates of stock, the conditions and terms of the by-laws and articles of incorporation, and the statutes and decisions of the various courts, as necessarily it must have done in the considering of all the bearings of this case; but after all when it comes to the decision of the jury the matter is in a small compass.

It is a suit by the plaintiff, Bright Williamson, upon a contract which he sets forth in his complaint, and upon which he claims he has the right to recover from the defendant; and it is for you to say whether he has that right or not upon the presentation of the issues that now will be presented to you.

More fully now the plaintiff alleges that he became in due process the holder and owner of certain shares of stock in the defendant building and loan association; and he alleges that the terms upon which he took that stock were that he was to pay an admission fee of a certain amount, and then pay instalments on his stock for seventy-eight months—seventy-eight monthly instalments.

132 He alleges further that the defendant building and loan association agreed with him that upon the payment by him of these seventy-eight instalments, together with the membership fee, it would then repay to him the full amount of one hundred dollars upon each and every of the said shares of stock.

He alleges that under that arrangement he took twenty-five shares of stock.

He alleges that he did perform all the conditions and terms of the contract on his part, and that the seventy-eight months have elapsed, the seventy-eight payments have been made, and that he is entitled now to his $2,500; that is to say, $100 for each and every share of

stock so held by him. That is the foundation of the claim that he sets forth in his complaint.

He sets up in the complaint that some years subsequent to the time of entering into this contract he borrowed under a distinct and definite agreement with the defendant building and loan association a certain amount of money, and that he pledged, as security for the loan which he thus obtained from the defendant, the shares of stock he already held in the association, and that he was bound by the loan to do certain things; that is, to pay the interest and premiums, and that he did pay these charges; and now admits that the defendant is entitled to offset this loan which he procured from it against the amount due on his original contract; to wit, the sum of $2,500; and only claims that the defendant is bound to pay him the balance after deducting the amount of his loan from the amount of the original contract. The amount of the loan being $937.50, and deducting that amount from $2,500, which he claims to be due on his original contract leaves the sum of $1,562.50, which he claims is now due him from the defendant; and that is what he brings his suit for, together with the interest from the time he alleges it became due and payable, and he was refused payment.

133 The defendant does not deny that there was a contract between the plaintiff and defendant; does not deny that he was a stockholder or member of the defendant association but it sets forth a different contract from that which the plaintiff sets forth. It alleges that instead of the period of 78 months and 78 monthly payments being limited as completing the performance of the contract by the plaintiff that the contract was that he became a member of the defendant building and loan association, subject to all of its by-laws and rules and regulations, its charter and everything else governing the association; and claims further that under that arrangement he was bound to pay not only a definite, limited number of 78 payments, but was bound to pay any additional payment which would be necessary, taken together with the profits on his payments, to mature his stock to the par value of $100 for each share. That is the position which the defendant takes.

Now, this case has already passed under the consideration of the supreme court of this State after passing through this court upon another branch of the case; and that court has construed the character of this contract.

With us the point at issue between the two parties as to this view of the case is whether or not it was a definite, limited contract—limited to the payment of 78 instalments by the plaintiff, and the absolute obligation of the defendant arising thereon to pay him $100 a share; or whether it was, on the other hand, a contract by which the plaintiff was to keep on paying until by the books of the association or in some other way—whatever way they arrived at such conclusion—until his shares would arrive at the value of $100 each. The supreme court of this State has already held that the certificate of stock and the other matters that enter into the contract, as specifically set forth in the certificate, are to be taken in connection with

whatever representations the defendant actually made at the
134 time the contract was entered into; and if it did make any representations in addition to those matters which led to the making of a different contract from that expressed by its by-laws and its articles of incorporation that special contract was to govern rather than the general contract which would result from its by-laws and articles of incorporation in connection with the certificate of stock.

So, that is the question for you to determine in the first instance whether or not this defendant did induce the plaintiff by literature, by written or printed representations, or by verbal representations—any representations in addition to those contained in its certificate of stock and by-laws and other matters mentioned in the certificate—to enter into this contract; whether it induced him to believe that it was a contract for a limited number of payments and that upon the completion of those payments it would be a fulfilment by the plaintiff of his side of the contract, and an absolute obligation on the part of the defendant to pay the amount of $100 a share. And if the evidence in the case satisfies you that the defendant did hold out such representations, then those representations are binding on the defendant and fixes the terms of the contract. I say that is a question for you to determine from the evidence in the case: Whether it was a fixed and limited contract, or whether it was unlimited, as the defendant claims, or limited only by the time that the payments in excess of the 78 together with the profits would make by its method of book-keeping and its calculation the plaintiff's stock worth $2,500.

Now, the defendant, in addition to its claim that it was an estimated period instead of a definite, limited period, sets up the further defense that if it had undertaken to make a contract of the character that the plaintiff claims, that is a definite, fixed number of payments, that it would have been acting beyond its powers as a corporation under the laws that existed; and that, therefore, such an act on its part
135 would have been void—that such a contract would have been void, as being in excess of the powers it possessed to make. The Supreme Court in considering this case has laid down a principle which disposes effectually of that contention when it says, quoting from another authority, quoting approvingly and making the opinion its own, as a principle governing in this case, that where the act is not immoral—where the act that is alleged to be beyond the power of a corporation is not an immoral act, nor expressly forbidden by some law, then the court will not allow the corporation to come in and claim that it was *ultra vires*, or beyond its powers. It is a common principle of estoppel as we speak of it in the law, that where a person has made representations and induced another person to act on those representations, then unless those representations were made by a corporation, and made by it in violation of good morals which the other side would know was against good morals unless made in violation of some express provision of the law that the other side would be bound to know, unless it come in those inhibitions, then although it might be beyond the technical powers of the corporation yet the courts would not allow the corporation to take advantage of

its own wrong and defeat the other party, the plaintiff, of his rights by saying that it was a void contract on its part, because it was beyond its powers to enter into. So the principle of *ultra vires* cannot enter in this case.

The remaining defense which the defendant set up is that the plaintiff (although it admits that the plaintiff entered into the original contract with the defendant) waived the provisions of that contract—cast them aside—when he entered into a subsequent contract by which he made a loan with the association. So that by the defendant's contention if you should conclude that the plaintiff did have a definite contract with the defendant by which after the plaintiff had made 78 payments he would be entitled to re-
136 ceive $2,500, still if you should also conclude that he entered into the loan contract the contention of the defendant is that by entering into the loan contract he waived his rights under the original contract and became bound by whatever changes had been made in the by-laws of the association subsequent to the making of the original contract and up to the time of the making of this loan contract.

Now, unquestionably, Mr. Foreman and gentlemen, a person may waive a right which he has, especially a right arising out of contract. A man may have any one of you under contract to do some particular thing, to build a bridge or a house by a certain day. He may have you bound by a penalty to do the thing by a particular day, yet he may, although you fail to do the thing, he may waive his rights under the contract and make some other contract with you. And so, in this case, the plaintiff, even though he had the defendant bound by this original contract which he alleges, had the power and right if he chose to waive the benefits accruing to him or the rights growing in his favor out of the original contract, and so release the defendant from the performance of it. Now where a defendant comes into court relying on such a defense as that it is bound to establish the facts necessary to show the truth of the defense; and it is bound to prove by the preponderance of the evidence that the plaintiff did cast aside his rights and benefits which had accrued to him already under the contract; or, in other words waive them and thereby release the defendant from its performance. Now, in this case, if the defendant has offered evidence, satisfactory to your mind, of a waiver, has shown that the plaintiff did waive his original contract, it constitutes a good defense to the plaintiff's recovery in this case. But it is incumbent on the defendant to show that. The plaintiff is not bound to show anything with reference to that matter unless in reply to anything which the defendant may show as going to establish the waiver.

137 I charge you that where a man has a valid claim against another he may afterwards pledge that claim to the other party in any transaction—any subsequent transaction—and yet by that act of pledging not waive any right which he may have had under the original transaction. The mere act of pledging the shares of stock does not amount to a waiver of any right which the plaintiff had under the original contract.

Now, Mr. Foreman, I think those are the issues which are presented to you for decision.

If the plaintiff has established his contract and it does not appear to be an unreasonable or immoral contract, in which case the court would not allow him to set it up, he is entitled to recover on it, unless the defendant has shown something that would defeat it; and it only remains for you to determine whether or not he has established his contract. He is bound to prove it by the preponderance of the evidence, and if he has so established it then it remains for you to determine what your verdict will be in his favor, unless the defendant may have shown some matter which goes to defeat his right. The plaintiff is suing on a specific, definite claim which must be the amount which he claims or nothing at all. He claims that his stock is paid-up stock, that he is not suing to recover from the defendant an amount due on stock which was not paid up. This is not his contention. But he claims that his stock was fully matured or paid up; and that he is entitled on the terms of the contract to have the full amount due on his contract, less, of course, the offset of the loan which you have heard mentioned. Now if he was suing the defendant for the withdrawal value of the shares of stock which had not been already paid up the defendant would probably not come and offer to allow him to have judgment for whatever you might conclude was due on that unmatured stock, but would take the position—as it would have the right to do—that he could
138 not recover until he had fully complied with the terms of the contract. But he is suing on what he claims to be fully paid-up or matured stock; and, therefore, if he establishes that contention he is entitled to recover the full amount of his paid-up stock. So your verdict must be in favor of the plaintiff for the full amount he claims or else in favor of the defendant. There is no ground for you to give a compromise verdict, to give him a few hundred, or a greater number of dollars, but you must either give the plaintiff the full amount he claims or give a verdict in favor of the defendant.

So, gentlemen, if you conclude the plaintiff is entitled to recover, your verdict will be in favor of the plaintiff in the sum of $1,562.50, together with interest at 7 per cent. from December, 1897. That is what he claims.

If you conclude that he is not entitled to recover that amount then your verdict will be in favor of the defendant.

I do not deem it necessary to go into a further discussion of these by-laws, they are really matters more of fact to you, and that have been fully discussed to you. In fact, in the view I take of this case the clear, sharply defined question for you, and the only one, is whether or not there was such a contract as the plaintiff claims, and if so whether anything has been shown by the defendant to defeat that contract.

So, Mr. Foreman and gentlemen, you may take this case now under these instructions and determine what shall be your verdict.

I will say that the requests that have been handed up by the defendant for me to charge I do not deem applicable to the case, in the view that I take and they are therefore refused.

Your verdict will be either for the plaintiff: "We find for the plaintiff"—so many dollars, or "We find for the defendant."

Now, in writing your verdict, if you find in favor of the
139 plaintiff, write the amount out in words and not in figures. The verdict must be written on the complaint.

Jury rendered verdict in favor of plaintiff for $1,805.53.

Judgment on verdict duly entered up for $1,805.53, on M'ch 20, 1900.

Written notice of intention to appeal from judgment duly given.

Exceptions.

I. That his honor erred in overruling the motion made for nonsuit on the following ground:

"That there is no proof of the entire contract. That there has been no introduction of the contract of loan."

II. That his honor erred in leaving to the jury the construction of the written contract of membership and the written contract of loan. It being respectfully submitted that the construction of written instruments is for the court and not for the jury.

III. That his honor erred in refusing to charge the jury, as requested by counsel for defendant, as follows:

"I charge you that the contract is to be governed and construed by the laws of the State of New York as the contract was made there and was to be performed there."

IV. That his honor erred in refusing to charge the jury, as requested by counsel for defendant, as follows:

"I charge you that what the laws of New York are, are facts for you to find, and that full faith and credit are to be given those laws under art. 4, sec. 1, of the Constitution of the United States, and section 905 of the Revised Statutes of the United States."

V. That his honor erred in refusing to charge the jury, as requested by counsel for defendant, as follows:

"I charge you that if you find that the defendant was incorporated under chapter 122 of the Laws of 1851 of the State of New York, and the acts amendatory thereof, that said laws are to
140 be given in this court the same faith and credit as they have by law or usage in the courts of New York, in accordance with the provisions of section 905 of the Revised Statutes of the United States."

VI. That his honor erred in refusing to charge the jury, as requested by counsel for defendant, as follows:

"I charge you that if you find from the evidence that the defendant was incorporated under chapter 122 of the Laws of 1851 of the State of New York and the acts amendatory thereof, and if you further find that the courts of New York have construed said laws, thereby holding that a corporation duly incorporated under them was a 'building, mutual, loan and accumulating fund association' in which all of its members stand on the same footing, each sharing equally in the profits and losses, then I charge you that the same

construction is to prevail in this case, under art. 4, sec. 1, U. S. Constitution, and sec. 905 of the Revised Statutes of the United States."

VII. That his honor erred in refusing to charge the jury, as requested by counsel for defendant, as follows:

"If you find that the defendant association was incorporated under the chapter 122 of the Laws of 1851 of the State of New York, and the acts amendatory thereof, and as the plaintiff contracted with the defendant, then I charge you that he is bound by such laws and is not exempt from making the monthly or other stated payments, provided for in the articles of incorporation and by-laws upon the ground of having made a fixed number of monthly payments, regardless of the fact whether such payments and the earnings of the defendant have brought the plaintiff's stock up to the par value of $100.00 per share."

VIII. That his honor erred in refusing to charge the jury, as requested by counsel for defendant, as follows:

"If you find that the defendant was incorporated under chapter 122 of the Laws of 1851 of the State of New York,
141 and the acts amendatory thereof, and if you further find that the said statute and amendments were construed by the supreme court of New York in a case entitled O'Malley *vs.* The People's Building, Loan & Savings Association, then I charge you that the defendant did not possess the power to issue a certificate containing a fixed period of maturity, and it cannot be enforced against the defendant in this court, as an unconditional promise to pay $100.00 per share at the expiration of 78 fixed monthly payments, as full faith and credit must be given the laws of the State of New York, under art. 4, sec. 1, U. S. Constitution, and sec. 905 of the Revised Statutes of the United States."

IX. That his honor erred in refusing to charge the jury, as requested by counsel for defendant, as follows:

"I charge you that under the terms of the contract of membership, and the contract of loan, by-laws, and charter, the transaction between the plaintiff and defendant, does not terminate, merely upon making a fixed number of payments, but only when the dues paid in by him with the profits apportioned to his shares, make them equal their par value of $100.00 per share."

X. That his honor erred in refusing to charge the jury, as requested by counsel for defendant, as follows:

"I charge you that as the plaintiff procured an advance or loan from the defendant, and having assigned his stock, as collateral security therefor, cannot withdraw from the association, as he contracted to remain a member until his stock reaches its par value of $100.00 per share."

XI. That his honor erred in refusing to charge the jury, as requested by counsel for defendant, as follows:

"I charge you that it is incumbent on the plaintiff to prove by a preponderance of testimony that the earnings of the defendant *has* matured his stock, before he can recover judgment against the defendant."

XII. That his honor erred in refusing to charge the jury
142 as requested by counsel for defendant, as follows:

"I charge you that the plaintiff cannot estop the defendant for what is said on the face of the certificates and literature relative to stock maturing in 78 months as said statements related to a future fact on which no legal reliance could be placed."

XIII. That his honor erred in refusing to charge the jury, as requested by counsel for defendant, as follows:

"I charge you that one of the elements of an equitable estoppel is, that the party setting it up must have been induced to change his position to his injury by the party against whom it is set up, and if you find what is said about stock maturing in 78 months, would be to the advantage of the plaintiff, then he cannot estop the defendant."

XIV. That his honor erred in refusing to charge the jury, as requested by counsel for defendant, as follows:

"I charge you that as the plaintiff procured the amount borrowed under the by-laws as he alleges, and as his contract of loan made the by-laws and charter a part of said contract, that he is estopped from claiming under them and against them at the same time, and that he is not exempt from making the monthly payments, as they provide until the amount of dues paid in by him, plus his *pro rata* share of the profits, have brought his stock up to its maturity value of $100.00 per share."

XV. That his honor erred in refusing to charge the jury, as requested by counsel for defendant as follows:

"I charge you that as the plaintiff has sued on the contract and clings to the benefits thereof, to wit: the amount borrowed, that he he is estopped from setting up any alleged misrepresentations made to him by the defendant which (as alleged) induced him to enter into the contract."

XVI. That his honor erred in refusing to charge the jury, as requested by counsel for defendant, as follows:

143 "If you find that at the commencement of this action that the defendant did not have money in its treasury applicable to plaintiff's claim, then you will find for the defendant."

XVII. That his honor erred in refusing to charge the jury, as requested by counsel for defendant, as follows:

"I charge you that the plaintiff was charged with notice of the provisions and requirements of the articles of incorporation, by-laws and the laws of New York under which the defendant was organized and conducted its operations."

We hereby agree that the foregoing shall constitute the case for the supreme court on appeal in the above-stated action, and also the return required by law.

T. H. SPAIN,
Appellant's Attorney.
GEO. W. BROWN,
Respondent's Attorney.

144 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, November Term, 1900.

BRIGHT WILLIAMSON, Plaintiff, Respondent,
vs.
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Defendant, Appellant.

Opinion.

McIVER, *C. J.*:

The plaintiff brings this action to recover the sum of $1562.50, besides interest thereon, alleged to be due him by defendant under a contract, the terms of which are set forth in the complaint. The defendant in its answer denies that the contract between it and the plaintiff was as alleged in the complaint, but was, as it is alleged to be in the answer, and that, under the terms of the contract as set forth in the answer, there is nothing now due to the plaintiff.

The case came on for trial before his honor Judge Klugh and a jury, and a verdict having been rendered in favor of the plaintiff, and judgment having been entered thereon, the defendant appeals from such judgment upon the several exceptions set out in the record. These exceptions (omitting the first, which has been very properly abandoned) together with the charge of the circuit judge will be incorporated by the reporter in his report of the case.

145 Before proceeding to the consideration of the exceptions we desire to say that all of the material questions presented in this case, except the question of waiver or estoppel, as it is termed in the exceptions, have been conclusively determined, at least so far as the parties to this case are concerned, by the decision of this court in a previous branch of this case reported in 54 S. C., 582. The defendant made no effort to have that decision reviewed by any higher tribunal, and, therefore, whether it was right or wrong, (though we must say that we think it was entirely right, and that any other conclusion than that then reached would have operated a fraud upon the plaintiff) it must be held absolutely conclusive so far as the parties to this case are concerned. This court there held:

1st. That the proper construction of the contract between the parties was that contended for by the plaintiff, and not that contended for by the defendant.

2d. That the contention that, because the defendant has no money in their treasury applicable to the claim of the plaintiff, did not defeat plaintiff's cause of action.

3d. That the position taken by defendant that the contract, if construed to be a contract fixing a definite time for the maturity of the shares would be *ultra vires* could not be sustained.

But the question whether the plaintiff had waived his right to insist upon his contract, as originally made, by becoming a borrower some time after the plaintiff had received the certificates for the 25 shares, the par value of which he is now claiming, was left

open, and that, as it seems to us, is the only question which is now open.

It is contended, however, by the counsel for the defendant, who is now the appellant here, that the former decision should not be regarded as conclusive here, because the answer of defendant was not before the court when that decision was made, "nor the
146 contract of loan," and that all the questions raised by the pleadings were not before the court, and, consequently, could not then be passed upon. We think that an examination of the record of the case before the court at the time of the former hearing will show that this is a mistake, except so far as the answer is concerned; and that, being merely a statement in legal form of the grounds of defense, throws no more light upon the questions involved, than the facts which were then before the court afforded. An examination of the opinion of the court in the former decision will show that the court then had before it the terms of the certificates of shares, the "literature" of the association, that is: the printed circulars and leaflets issued by the association; the express promises made by the duly authorized agents of the defendant, the fact that the plaintiff had effected a loan from the defendant, the charter and by-laws of the association, and the fact that the defendant did not have in its treasury at the time when the shares matured (as contended for by plaintiff) the money applicable to plaintiff's claim; and that all these matters were considered and passed upon by the court under the former appeal, except the question of waiver as above stated.

Coming to the exceptions, and passing by the first, which, as already stated, was abandoned, we take up the second exception. That exception is based upon a misconception of the judge's charge, and for that reason must be overruled. The question as to the construction of the contract was not left to the jury. On the contrary, the jury, after having been told how the supreme court had construed the contract, were instructed to enquire, as a matter of fact, whether the defendant had, by its agents or by its written or printed "literature," made such representations to the plaintiff as induced him to believe that the contract "was a contract for a limited number of payments and that upon the completion of those payments it would be a fulfilment by the plaintiff of his side of the con-
147 tract, and an absolute obligation on the part of the defendant to pay the amount of $100 a share." That was a pure question of fact which it was the province of the jury to pass upon.

Exceptions 3, 4, 5, 6, 7, 8 all impute error to the circuit judge in refusing to charge the several requests therein repeated—in reference to whether this was a New York contract, to be construed according to the laws of that State. These questions were distinctly made under the former appeal, as is shown by the points and authorities of counsel for defendant under the former appeal, at page 589 of 54th S. C., above cited, and, therefore, cannot be renewed here These exceptions are overruled.

Exceptions 9, 10 and 11 are disposed of by the former decision, as stated above, and must be overruled.

Exception 12 cannot be sustained, for the representations which the jury were instructed to inquire into, were not in reference for a future fact.

As to the 13th exception, we are at a loss to perceive what relevancy such an instruction has to the case as made by the plaintiff. The exception is overruled.

As to exceptions 14, 15, 16 and 17 it seems to us that they are disposed of by what has already been said, and these exceptions are overruled. The judgment of this court is that the judgment of the circuit court be affirmed.

STATE OF SOUTH CAROLINA:

In the Supreme Court.

BRIGHT WILLIAMSON, Respondent.
vs.
EASTERN BUILDING AND LOAN ASSOCIATION of Syracuse, N. Y., Appellant.
} Appeal from Circuit Court, Darlington County.

T. H. Spain, for appellant.
Geo. W. Brown, for respondent.

Judgment.

The judgment of this court is that the judgment of the circuit court be affirmed.

Attest:
[L. S.] U. R. BROOKS, *Clerk.*

148 STATE OF SOUTH CAROLINA,
County of Darlington.

BRIGHT WILLIAMSON, Plaintiff, Respondent,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Defendant, Appellant.

Eastern Building and Loan Association of Syracuse, N. Y., hereby consents that the stay of remittitur in the above-entitled cause shall be granted upon condition that the status of the property involved in this case shall not be disturbed until after the final determination of the case.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y.,
By J. L. KING, *President.*

Attest:
[L. S.] N. C. VISSCHER, *Ass't Sec'y.*

April 17th, 1901.

I hereby certify that I am not concerned in the action and that there is merit in the grounds presented in this petition for a stay of remittitur.

GEO. E. DARGAN,
Attorney-at-law.

April 17, 1901.

STATE OF SOUTH CAROLINA:

In the Supreme Court.

BRIGHT WILLIAMSON, Plaintiff, Respondent,
vs.
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Defendant, Appellant.

Petition to Stay Remittitur.

To the honorable supreme court of South Carolina:

The petition of the defendant, appellant respectfully shows that the said appellant raised a Federal question in the above cause, and that your petitioner is desirous of obtaining a writ of error from the United States Supreme Court for the purpose of having said questions passed upon by said court.

Wherefore, your humble petitioner prays that a stay of re-
149 mittitur be granted until the said writ of error is finally disposed of.

T. H. SPAIN,
Appellant's Attorney.

On hearing the above petition it is ordered that the remittitur be stayed until the questions raised by the writ of error be finally determined by the United States Supreme Court, or until the further order of this court.

HENRY McIVER, *C. J.*

April 18th, 1901.

I, U. R. Brooks, clerk of the supreme court of South Carolina, do hereby certify that the foregoing are true, full and correct copies of the "case," judgment, remittitur and opinion rendered by the court in the case of Bright Williamson, plaintiff, respondent, against Eastern Building and Loan Association of Syracuse, N. Y., defendant, appellant, also true and correct copies of the petition filed for stay of remittitur and order staying the same, all of which are now on file in my office; and I do further certify that the opinion rendered by the court in said case and the petition filed for staying remittitur and the order granting the same are parts of the record in said case.

Given under my hand and the seal of the court, at Columbia, this 24th day of June, one thousand nine hundred and one and in the 125th year of the Independence of the United States of America.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
[L. S.] *Clerk Supreme Court South Carolina.*

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150 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of South Carolina, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Eastern Building and Loan Association of Syracuse N. Y. appellant and Bright Williamson respondent wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause
151 of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said appellant as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 29th day of July, in the year of our Lord one thousand nine hundred and one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] Orignal writ. Supreme court of South Carolina, clerk's office, Columbia, S. C. Filed 5 Aug. 1901. U. R. Brooks, clerk.

152 In the Supreme Court of the United States, October Term, 1901.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Plaintiff in Error, Defendant Below,
against
BRIGHT WILLIAMSON, Defendant in Error, Plaintiff Below.

Know all men by these presents that we, Eastern Building and Loan Association of Syracuse, N. Y., a domestic corporation of the State of New York as principal and The United States Fidelity and Guarantee Company, a body corporate of Baltimore, Maryland, as surety, are held and firmly bound unto Bright Williamson in the full and just sum of four thousand ($4,000) dollars to be paid to said Bright Williamson, or his certain attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, successors and assigns jointly by these presents.

Sealed with our seals and dated this 26th day of June in the year of our Lord one thousand nine hundred and one.

Whereas lately at a session of the supreme court for the State of South Carolina, in a suit pending in said court between said Bright Williamson, plaintiff, respondent, against said Eastern Building and Loan Association of Syracuse, N. Y., defendant appellant, a final judgment was rendered against the said Eastern Building and Loan Association of Syracuse, N. Y., and the said Eastern Build-
153 ing and Loan Association of Syracuse, N. Y., having obtained the allowance of a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid action and a citation directed to the said Bright Williamson citing and admonishing him to be and appear at the Supreme Court of the United States at Washington within thirty days from the date thereof.

Now the condition of the above obligation is such that if the said Eastern Building and Loan Association of Syracuse, N. Y., shall prosecute said writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and effect.

[Eastern B. & L. Ass'n Seal.]

EASTERN BUILDING & LOAN ASSOC'N
OF SYRACUSE, N. Y.,
By D. A. PIERCE, *Vice-Pres't.*

[Guaranty Co. Seal.]

THE UNITED STATES FIDELITY &
GUARANTY CO. OF BALTIMORE, MD.,
By GEO. F. McKEOUGH, *Attorney-in-fact.*

STATE OF NEW YORK, } ss:
County of Onondaga, City of Syracuse, }

On this 26th day of June, 1901 before me, a notary public in and for the aforesaid county, personally appeared D. A. Pierce, to me

known and known to me to be the individual described in and who executed the foregoing instrument on the part of the Eastern Building and Loan Association, who being by me duly sworn de-
154 posed and said that he resided in the city of Syracuse, New York; that he is the vice-president of the corporation described in and which executed the above instrument; that he is vice-president of the Eastern Building and Loan Association described in and which executed the above instrument; that he knew the seal of said corporation and that the seal affixed to said instrument was such corporate seal and that it was so affixed by order of the board of directors of said corporation and that he signed his name thereto by like order.

HARRY J. HAMLIN,
Notary Public. [SEAL.]

155 *Statement of the United States Fidelity and Guaranty Company, Rendered to the Department of Justice, Washington, D. C., at the Close of Business, March 31st, 1901.*

Commenced business August 1st, 1896.

Assets.

Investments, stocks and bonds (market value)	$1,189,634.38	
Cash on hand and in banks	215,341.89	
Collateral loans	596,489.00	
Real estate	137,492.04	
Loans on mortgage	525.00	
Mortgages and other collateral ac. salvage	45,795.31	
Agents' balances, less commissions, fidelity and surety	195,394.68	
Agents' balances, less commissions, burglary	13,442.50	
Due for subscriptions' department guaranteed attorneys	22,553.77	
Interest due and accrued	12,827.32	
		$2,429,495.89

Liabilities.

Capital stock paid in cash	$1,500,000.00	
Cash collateral deposits	80,334.94	
Surplus and reserve	849,160.95	
		$2,429,495.89

JOHN R. BLAND, *President.*

GEORGE R. CALLIS, *Secretary.*

STATE OF MARYLAND, } ss:
City of Baltimore, }

On this ninth day of April, 1901, before me, A. D. Patrick, a notary public in and for the city and State aforesaid, appeared John R. Bland, president, and George R. Callis, secretary respectively, of the United States Fidelity and Guaranty Company, who being by me severally duly sworn, did depose and say that they are such officers of the said company, and that the above and foregoing is a true and exact copy of the statement of the assets and liabilities of said company, as they appeared on the books of the said company on the 31st day of March, A. D. 1901, which statement has been duly filed with the Department of Justice, Washington, D. C.

In witness whereof, I have hereto set my hand and official seal, the day and year aforesaid.

[NOTARIAL SEAL.] A. D. PATRICK,
Notary Public.

156 CITY OF SYRACUSE, } ss:
County of Onondaga, State of New York, }

On this 26th day of June, 1901, before me personally appeared Geo. F. McKeough, attorney-in-fact of the United States Fidelity and Guaranty Company, a corporation created and existing under and by virtue of the laws of the State of Maryland, and duly authorized to transact business in the State of New York, with whom I am personally acquainted, who being by me duly sworn, said: That he resided in the city of Syracuse, N. Y.; that he is the attorney-in-fact of the United States Fidelity and Guaranty Company; that he knew the corporate seal of said company; that the seal affixed to the annexed instrument is such corporate seal: that it was affixed thereto by order of the board of directors of said company, and that he signed said instrument as attorney-in-fact of said company by like authority. And the said Thos. O'Donnell further said that he is acquainted with Geo. F. McKeough and knew him to be the attorney-in-fact of said company; and that the signature of the said Geo. F. McKeough subscribed to the said instrument is the genuine handwriting of the said Geo. F. McKeough, and was thereto subscribed by the like order of the said board of directors, and in the presence of him, the said Thos. O'Donnell.

THOMAS O'DONNELL,
[SEAL.] *Notary Public.*

At a meeting of the board of directors of the United States Fidelity and Guaranty Company, held at the office of the company in the city of Baltimore, State of Maryland, on the 19th day of January, A. D. 1899, at which was present a quorum of said directors duly authorized to act in the premises, on motion it was unanimously

Resolved, That in pursuance of section 811 of the Code of Civil Procedure of the State of New York, James K. McGuire, Geo. F. McKeough and Thomas Hogan, the attorneys-in-fact of the United

States Fidelity and Guaranty Company for the courty of Onondaga in the State of New York, be, and each of them is hereby authorized and empowered to sign, execute and deliver any and all bonds or undertakings for and on behalf of this company, and to attach thereto the seal of the company, the same to be attested by either one of the said attorneys-in-fact above named as occasion may require.

CITY OF BALTIMORE, } ss:
County of ——, *State of Maryland*, }

I, Richard D. Lang, ass't secretary of the United States Fidelity and Guaranty Company, have compared the foregoing resolution with the original thereof, as recorded in the minute book of the said company, and do hereby certify that the same is a true and correct transcript therefrom, and of the whole of said original resolution.

Given under my hand and the seal of the company at Baltimore, Md. this 27th day of May, 1901.

RICH'D D. LANG,
[SEAL.] *Ass't Secretary.*

[Endorsed:] Copy bond Approved July 29 1901 R. W. Peckham Supreme court of South Carolina, clerk's office, Columbia, S. C. Filed 5 Aug 1901 U. R. Brooks, clerk.

157 In the Supreme Court of the United States, October Term, 1901.

Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed 5 Aug., 1901. U. R. Brooks, Clerk.

EASTERN BUILDING AND LOAN ASSOCIATION OF Syracuse, N. Y., Plaintiff in Error (Defendant Below),
against
BRIGHT WILLIAMSON, Defendant in Error (Plaintiff Below).
} Petition for Writ of Error.

In the Matter of the Petition of the Eastern Building and Loan Association of Syracuse, N. Y., a Corporation of New York, for a Writ of Error, Directed to the Supreme Court of the State of South Carolina, for the Purpose of Bringing to this Court by said Writ for Review the Case of—

BRIGHT WILLIAMSON, Plaintiff, Respondent,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Defendant, Appellant.

Wm. Hepburn Russell, Wm. Beverly Winslow, attorneys for petitioner.

D. A. Pierce, Russell & Winslow, of counsel.

158 In the Supreme Court of the United States, October Term, 1901

EASTERN BUILDING AND LOAN ASSOCIATION OF Syracuse, New York, Plaintiff in Error (Defendant Below),
against
BRIGHT WILLIAMSON, Defendant in Error (Plaintiff Below).
} Petition for Writ of Error.

In the Matter of the Petition of the Eastern Building and Loan Association of Syracuse, N. Y., a Corporation of New York, for a Writ of Error, Directed to the Supreme Court of the State of South Carolina, for the Purpose of Bringing to this Court by said Writ for Review the Case of—

BRIGHT WILLIAMSON, Plaintiff, Respondent,
against
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Defendant, Appellant.

159 Petition for a writ of error to require the supreme court of the State of South Carolina to certify, send up, and transmit to this honorable court, under the provisions of section 709 of the Revised Statutes of the United States, the record in said case and the judgment and opinion of the supreme court of South Carolina therein, in order that certain Federal questions arising upon the face of the record, judgment, and opinion may be reviewed, re-examined, and finally determined by the Supreme Court of the United States.

To the honorable the Chief Justice of the United States and the associate justices of the Supreme Court of the United States:

Your petitioner, Eastern Building and Loan Association of Syracuse, N. Y., a corporation organized and existing under the laws of the State of New York and having its domicile and corporate situs in the city of Syracuse, in said State, respectfully shows:

That on or about the — day of April, 1901, the supreme court of the State of South Carolina rendered a judgment against your petitioner in a certain case wherein Bright Williamson was the plaintiff, respondent and your petitioner was defendant, appellant, and by said judgment affirmed the judgment of the court of common pleas of the State of South Carolina, for the county of Darlington in said State, from which said case was, by your petitioner, appealed to said supreme court of South Carolina, and said supreme court of South Carolina, by its judgment in said case, affirmed the judgment of the court below against your petitioner for the sum of one thousand eight hundred and five dollars and fifty-three cents ($1,805.53) and thereby deprived your petitioner of its prop-
160 erty without due process of law, impaired the obligation of a contract, and refused to give full faith and credit to the public acts, records, and judicial proceedings of the State of New

York, all of which will appear by reference to the record and proceedings in this cause.

Said supreme court of South Carolina is the highest court in the said State in which a decision could be had and the said decision and judgment was a final judgment in said case and finally determined the same, and your petitioner avers that by the said opinion and judgment of said supreme court of South Carolina in said case certain errors were committed to the prejudice of the defendant in said case, your petitioner herein, and certain Federal questions appearing upon the face of the record in said case were decided and determined adversely to the said defendant, your petitioner, and adversely to the constitutional rights, privileges and immunities of your petitioner arising under the Constitution of the United States and claimed and asserted as such by your petitioner in said case.

Your petitioner claims the right to remove said judgment, and the record in said cause, to the Supreme Court of the United States by a writ of error under the statutes of the United States authorizing writs of error to State courts, particularly under section 709 of the Revised Statutes of the United States, because your petitioner, defendant in said case, claimed before the said supreme court of South Carolina in said case certain rights, privileges and immunities granted and secured to your petitioner by the Constitution of the United States, and your petitioner particularly claimed, and the said record shows:

1. That a certain contract, entered into between plaintiff in said case and the defendant therein, your petitioner, should be construed under and controlled by the public acts, laws and judicial proceedings of the State of New York, in which State said contract
161 was entered into, and that full faith and credit should be given to the public acts, records and judicial proceedings of the State of New York by the courts of the State of South Carolina, and particularly by said supreme court of South Carolina, but by its judgment in said case said supreme court of South Carolina impaired the obligation of said contract, refused and failed to give full faith and credit to the public acts, laws and judicial proceedings of the State of New York, in violation of article IV, section 1, of the Constitution of the United States, and section 905 of the Revised Statutes of the United States.

2. That your petitioner plead and relied upon the laws of the State of New York, the articles of association and by-laws of your petitioner and upon the written agreements of said plaintiff, made and entered into with your petitioner, in the State of New York, and under the laws thereof, and said laws, articles of association, by-laws and written agreements were duly offered and admitted in evidence (printed case, pp. 5–11, fols. 19–42; pp. 33–34, fols. 131, 135; pp. 34–38, fols. 136–149; pp. 38–51, fols. 149–201; pp. 51–52, fols. 201–205; pp. 67, 68, fols. 265–268; pp. 68–69, fols. 269–274; pp. 69–94, fols. 274–375; pp. 95–106, fols. 378–422).

3. That certain decisions of the courts of the State of New York construing said laws, and similar contracts and agreements, made and entered into in said State, were given and admitted in evidence

in said action (printed case, pp. 107–113, fols. 424–449; p. 113, fol 449; pp. 113–124, fols. 450–494; pp. 124–128, fols. 494–509).

4. That your petitioner made certain requests of the lower court to charge the jury, which requests involved the right of your petitioner to have full faith and credit given by the courts of South Carolina to the said laws of the State of New York under article 4,

162 § 1 of the Constitution of the United States. Said requests were refused and a verdict for said plaintiff was duly rendered for the said sum of one thousand eight hundred and five dollars and fifty-three cents ($1,805.53) (printed case, pp. 128–129, fols. 509–515). Your petitioner thereupon duly took exception to the ruling of the trial court in refusing to charge the jury as requested, and assigned error thereto (printed case, pp. 139–143, fols. 553–569). Said assignments of error and exceptions became a part of the record in said case and were before the said supreme court of South Carolina at the time of making its decision in said case, which said assignments of error and exceptions fully and fairly raised upon the face of the record in said case the Federal questions therein involved (printed case, pp. 128–131, fols. 509–521; p. 139, fol. 552; pp. 139–141, fols. 553–561).

Wherefore, your petitioner prays the allowance of a writ of error returnable to the Supreme Court of the United States and for citation and supersedeas, and for such other orders and process as may be or become necessary in the premises, and that upon the giving of a supersedeas bond, and the approval thereof, all further proceedings in the supreme court of South Carolina, or under and pursuant to the judgment rendered therein, shall be suspended and stayed until the determination of said writ of error by the honorable the Supreme Court of the United States.

And your petitioner will ever pray.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., *Petitioner*,
By WILLIAM HEPBURN RUSSELL,
WILLIAM BEVERLY WINSLOW,
Attorneys for Petitioner.

D. O. PIERCE,
RUSSELL & WINSLOW,
Of Counsel.

163 [Endorsed:] Clerk will file the within. July 29, 1901. R. W. Peckham.

164 UNITED STATES OF AMERICA, *ss:*

To Bright Williamson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of South Carolina, wherein Eastern Building and Loan Association of Syracuse, N. Y., is plaintiff in error and you are defendant in error, to show cause, if any

there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 29th day of July, in the year of our Lord one thousand nine hundred and one.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

165 On this 7th day of August, in the year of our Lord one thousand nine hundred and one, personally appeared T. H. Spain before me, the subscriber, W. Albert Parrott clerk of court for Darlington county South Carolina, and makes oath that he delivered a true copy of the within citation to Geo. W. Brown and H. E. Young attorneys for Bright Williamson who duly acknowledged service of the same.

T. H. SPAIN.

Sworn to and subscribed the 7th day of August, A. D. 1901.

[Seal Clerk's Office, Darlington County, S. C.]

W. ALBERT PARROTT,
Clerk of Court, D. C.

[Endorsed:] Original citation. We hereby acknowledge service of the within citation, and hereby waive personal service of the same on Bright Williamson defendant in error August 7th, 1901. Geo. W. Brown, H. E. Young, attorneys for Bright Williamson, defendant in error.

166 Supreme Court of the United States, October Term, 1901.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Plaintiff in Error,
vs.
BRIGHT WILLIAMSON, Defendant in Error. } No. —.

Assignment of Errors.

Comes now The Eastern Building and Loan Association of Syracuse, N. Y., plaintiff in error, by its counsel, and respectfully represents that it feels itself aggrieved by the proceedings and judgment of the supreme court of South Carolina in the above-entitled cause, and assigns error thereto as follows:

I.

The supreme court of South Carolina erred in refusing to give full faith and credit to the public acts, records and judicial proceedings of the State of New York plead and given in evidence by the plaintiff in error and in denying the rule of constitutional obligation established by section 1 of article IV of the Constitution of

the United States, and section 905 of the Revised Statutes of the United States.

II

The supreme court of South Carolina erred in its construction of the contract obligations between plaintiff in error and defend-
167 ant in error in this, that by its refusal to consider and pass upon the contract obligations of defendant in error to the plaintiff in error, entered into in the State of New York, under the laws of that State and to be performed in that State, it refused full faith and credit to the public acts, records and judicial proceedings of the State of New York, and deprived the plaintiff in error of its property without due process of law.

III.

The supreme court of South Carolina erred in refusing to enforce the contract obligations of the defendant in error to the plaintiff in error in accordance with the provisions of chapter 122 of the Laws of New York of 1851, and chapter 564 of the Laws of New York of 1875, and with the charter of incorporation and by-laws of the plaintiff in error, thereby denying to plaintiff in error the equal protection of the laws in contravention of the XIVth amendment to the Constitution of the United States, at the same time refusing full faith and credit to the laws of New York and depriving plaintiff in error of its property without due process of law.

IV.

The supreme court of South Carolina erred in holding and adjudging that the laws of New York are not binding upon the courts of South Carolina, did not enter into, govern and control the construction of the contract obligations of the defendant in error to the plaintiff in error, so far as obligations of defendant in error as a member of and a stockholder in the plaintiff in error are concerned, and by such holding and decision, the court erred in refusing full faith and credit to the public acts, records and judicial proceedings of the State of New York, deprived the plaintiff in error of
168 its property without due process of law, and denied to it the equal protection of the laws.

V.

The supreme court of South Carolina erred in affirming the judgment of the court of common pleas for the county of Darlington, because the effect of such affirmance is to deprive plaintiff in error of its property without due process of law, deny to it the equal protection of the laws, deny full faith and credit to the laws and judical proceedings of the State of New York and abrogate the contract obligations of defendant in error to plaintiff in error in violation of of the Constitution of the United States, and particularly of the XIVth amendment thereto.

VI.

The supreme court of South Carolina erred in overruling the third exception of the plaintiff in error to the refusal of the trial judge to charge the jury as follows: "I charge you that the contract is to be governed and construed by the laws of the State of New York, as the contract was made there and was to be performed there."

VII.

The supreme court of South Carolina erred in overruling the fourth exception of the plaintiff in error to the refusal of the trial judge to charge the jury as follows: "I charge you that what the laws of New York are, are facts for you to find, and that full faith and credit are to be given those laws under article IV, section 1 of the Constitution of the United States and section 905 of the Revised Statutes of the United States."

VIII.

The supreme court of South Carolina erred in overruling
169 the fifth exception of the plaintiff in error to the refusal of the trial judge to charge the jury as follows: "I charge you that if you find that the defendant was incorporated under chapter 122 of the Laws of 1851 of the State of New York and the acts amendatory thereof, that said laws are to be given in this court the same faith and credit as they have by law or usage in the courts of New York, in accordance with the provisions of section 905 of the Revised Statutes of the United States."

IX.

The supreme court of South Carolina erred in overruling the sixth exception of the plaintiff in error to the refusal of the trial judge to charge the jury as follows: "I charge you that if you find from the evidence that the defendant was incorporated under chapter 122 of the Laws of 1851 of the State of New York and the acts amendatory thereof, and if you further find that the courts of New York have construed said laws, thereby holding that a corporation duly incorporated under them was a 'building, mutual, loan and accumulating fund association,' in which all of its members stand on the same footing, each sharing equally in the profits and losses, then I charge you that the same construction is to prevail in this case, under article 4, sec. 1, U. S. Constitution, and sec. 905 of the Revised Statutes of the United States.

X.

The supreme court of South Carolina erred in overruling the seventh exception of the plaintiff in error to the refusal of the trial judge to charge the jury as follows: "If you find that the defendant association was incorporated under the chapter 122 of the Laws of 1851 of the State of New York, and the acts amendatory thereof,

and as the plaintiff contracted with the defendant, then I
170 charge you that he is bound by such laws and is not exempt from making the monthly or other stated payments, provided for in the articles of incorporation and by-laws upon the ground of having made a fixed number of monthly payments, regardless of the fact whether such payments and the earnings of the defendant have brought the plaintiff's stock up to the par value of $100.00 per share."

XI.

The supreme court of South Carolina erred in overruling the eighth exception of the plaintiff in error to the refusal of the trial judge to charge the jury as follows: "If you find that the defendant was incorporated under chapter 122 of the Laws of 1851 of the State of New York, and the acts amendatory thereof, and if you further find that the said statute and amendments were construed by the supreme court of New York in a case entitled O'Malley *vs.* The People's Building, Loan & Savings Association, then I charge you that the defendant did not possess the power to issue a certificate containing a fixed period of maturity, and it cannot be enforced against the defendant in this court, as an unconditional promise to pay $100.00 per share at the expiration of 78 fixed monthly payments, as full faith and credit must be given the laws of the State of New York under art. 4, sec. 1, U. S. Constitution, and sec. 905 of the Revised Statutes of the United States."

XII.

The supreme court of South Carolina erred in overruling the ninth exception of the plaintiff in error to the refusal of the trial judge to charge the jury as follows: "I charge you that
171 under the terms of the contract of membership, and the contract of loan, by-laws, and charter, the transaction between the plaintiff and defendant, does not terminate, merely upon making a fixed number of payments, but only when the dues paid in by him with the profits apportioned to his shares, make them equal their par value of $100.00 per share."

XIII.

The supreme court of South Carolina erred in overruling the tenth exception of the plaintiff in error to the refusal of the trial judge to charge the jury as follows: "I charge you that as the plaintiff procured an advance or loan from the defendant, and having assigned his stock, as collateral security therefor, cannot withdraw from the association, as he contracted to remain a member until his stock reaches its par value of $100.00 per share."

XIV.

The supreme court of South Carolina erred in overruling the eleventh exception of the plaintiff in error to the refusal of the trial judge to charge the jury as follows: "I charge you that it is *en-*

cumbent on the plaintiff to prove by a preponderance of testimony that the earnings of the defendant *has* matured his stock, before he can recover judgment against the defendant."

XV.

The supreme court of South Carolina erred in overruling the twelfth exception of the plaintiff in error to the refusal of the trial judge to charge the jury as follows: "I charge you that the plaintiff cannot estop the defendant for what is said on the face of the certificates and literature relative to stock maturing in 78
172 months as said statements related to a future fact on which no legal reliance could be placed."

XVI.

The supreme court of South Carolina erred in overruling the thirteenth exception of the plaintiff in error to the refusal of the trial judge to charge the jury as follows: "I charge you that one of the elements of an equitable estoppel is, that the party setting it up must have been induced to change his position to his injury by the party against whom it is set up, and if you find what is said about stock maturing in 78 months, would be to the advantage of the plaintiff, then he cannot estop the defendant."

XVII.

The supreme court of South Carolina erred in overruling the fourteenth exception of the plaintiff in error to the refusal of the trial judge to charge the jury as follows: "I charge you that as the plaintiff procured the amount borrowed under the by-laws as he alleges, and as his contract of loan made the by-laws and charter a part of said contract, that he is estopped from claiming under them and against them at the same time, and that he is not exempt from making the monthly payments, as they provide until the amount of dues paid in by him, plus his *pro rata* share of the profits, have brought his stock up to its maturity value of $100.00 per share."

XVIII.

The supreme court of South Carolina erred in overruling the fifteenth exception of the plaintiff in error to the refusal of the trial judge to charge the jury as follows: "I charge you that as
173 the plaintiff has sued on the contract and clings to the benefits thereof, to wit: the amount borrowed, that he is estopped from setting up any alleged misrepresentations made to him by the defendant which (as alleged) induced him to enter into the contract."

XIX.

The supreme court of South Carolina erred in overruling the sixteenth exception of the plaintiff in error to the refusal of the trial judge to charge the jury as follows: "If you find that at the com-

mencement of this action that the defendant did not have money in its treasury applicable to plaintiff's claim, then you will find for the defendant."

XX.

The supreme court of South Carolina erred in overruling the seventeenth exception of the plaintiff in error to the refusal of the trial judge to charge the jury as follows: "I charge you that the plaintiff was charged with notice of the provisions and requirements of the articles of incorporation, by-laws and the laws of New York under which the defendant was organized and conducted its operations."

Wherefore, the said Eastern Building and Loan Association, plaintiff in error, prays this honorable court to examine and correct the errors assigned, and for a reversal of the judgment of the supreme court of South Carolina entered in the said case of Bright Williamson, as plaintiff, against Eastern Building and Loan Association of Syracuse, N. Y., as defendant.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y.,
Plaintiff in Error,
By WM. HEPBURN RUSSELL.
WM. BEVERLY WINSLOW, *Its Counsel.*

174 [Endorsed:] U. S. Supreme Court. Eastern Bldg. & Loan Ass'n of Syracuse, N. Y. *vs.* Bright Williamson. Make copy Original. Assignments of error. Russell & Winslow, attorneys for plaintiffs in error, 253 Broadway (Manhattan) New York city, N. Y. Supreme court of South Carolina, clerk's office, Columbia, S. C. Filed 5 Aug. 1901 U. R. Brooks, clerk.

Endorsed on cover: File No. 18,248. South Carolina supreme court. Term No., 395. Eastern Building and Loan Association of Syracuse, New York, plaintiff in error, *vs.* Bright Williamson. Filed August 15, 1901.

JAN 19 1903

Supreme Court of the United States

OCTOBER TERM, 1902
No. 152

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW YORK,
Plaintiff in Error

vs.

BRIGHT WILLIAMSON
Defendant in Error

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR

WM. HEPBURN RUSSELL,
WM. BEVERLY WINSLOW
Counsel for Plaintiff in Error

D. A. PIERCE
Of Counsel

EVENING POST JOB PRINTING HOUSE, NEW YORK.

Supreme Court of the United States,

OCTOBER TERM, 1902.

TERM No. 152.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Plaintiff in Error, vs. BRIGHT WILLIAMSON, Defendant in Error.	In Error to the Supreme Court of the State of South Carolina.

STATEMENT, BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

The record in this case presents a controversy between a corporation of New York and one of its stockholders resident in South Carolina, as to the *status* of the stockholder and the relative rights, duties and obligations of the corporation and its stockholders as incident to and arising out of their contracts of membership. The contest is over the contract of membership entered into in the State of New York, performable in that State and of which the laws of New York and the corporate articles and by-laws are necessarily constituent parts.

The defendant in error (plaintiff below), brought his action in the State of South Carolina, in the County of Darlington, in the Court of Common Pleas of that county, against the plaintiff in error (defendant below), seeking to recover the par value of his shares of stock in the Association. The complaint appears in the record.

Transcript, pp. 2–4.

Plaintiff in error, as defendant to said suit, duly answered the complaint and the answer appears in the record.

Transcript, pp. 4–7.

It will be noted that the answer shows that the defendant in error (plaintiff below) was a borrowing member or stockholder of the Association, and the answer recites the facts of the advance or loan to him and shows his indebtedness on account of *principal* to be the sum of $937.50.

Transcript, pp. 6, 7, Par. V. of Ans.

The reply of the defendant in error (plaintiff below) admits that he is an advanced or borrowing member of the Association and admits that he borrowed the sum stated in the answer, but denies that he is indebted in that amount, such denial being rested upon the theory that the stock of the defendant in error (plaintiff below) matured at the expiration of seventy-eight months from the date of its issue and at a time when only $58.50 per share had been paid thereon, but that notwithstanding this fact the defendant in error was entitled to withdraw such stock at its par value of $100 per share and offset the same against the amount of the loan or advance to him.

Transcript, p. 8, "Reply."

Upon these pleadings, the case was tried in the Court of Common Pleas of Darlington County,

South Carolina, "before Judge Klugh and a jury."

Transcript, p. 8.

The evidence material to be considered upon the Federal questions arising in the case and which call for determination by this Court, may be summarized as follows:

Defendant in error made application to become a member of, and stockholder in, the Eastern Association, on the 28th day of January, 1891. His application was in writing, and among other clauses contained the following:

"I hereby agree to abide by all terms, conditions and by-laws contained or referred to in the certificate of shares, and will also comply with all the rules and regulations of said Association."

Transcript, p. 24, Exhibit "A."

It will be noted that defendant in error applied "for membership" and subscribed "for twenty-five shares of *regular* stock."

Transcript, p. 24.

It follows that his attitude as a stockholder was that of all the other stockholders in the Association, the rights and duties of stockholders being equal, mutual and reciprocal.

The whole controversy grows out of the terms of the stock certificate that was issued upon this application, and the construction of that stock certificate as determining the rights and obligations of the stockholder and of the association. The stock certificate issued by the Association to the defendant in error is set out in the record.

Transcript, pp. 25, 26.

The clause in the certificate upon which the defendant in error, as plaintiff below, based his suit reads as follows:

"The said Eastern Building and Loan Association of Syracuse, N. Y., agrees to pay said shareholder or his heirs, executors, administrators or assigns the sum of one hundred dollars for each of said shares at the end of seventy-eight months from the date hereof."

Transcript, p. 25.

We direct attention to the fact that the laws of New York under which the association was incorporated, its article of Association and its by-laws will be searched in vain for any authority to issue stock certificates guaranteeing a fixed time for the maturity of the stock—that is, guaranteeing a fixed rate of profits or earnings upon the stockholder's investment. In this connection it will be seen that the application for stock bound the applicant to "comply with all the rules and regulations of said Association."

Transcript, p. 24.

The certificate itself also provides that "in consideration of the membership fee, together with agreements and statements contained in the application for membership in the Association, *and full compliance with the terms, conditions and by-laws printed on the front and back of this certificate, which are hereby referred to and made a part of this contract,*" the Association issues the stock and makes the agreement to pay as above quoted.

Further on in the certificate is the provision: "This certificate of shares is issued and received by the holder thereof upon the following express terms and conditions."

Transcript, p. 25.

The terms and conditions referred to, so far as we deem them material, are as follows:

"*First:* The stockholder agrees to pay, or cause to be paid, a monthly instalment of seventy-five cents on each share named in this contract, the

same to be paid on or before the last Saturday of each month, until such share matures, or is withdrawn."

Transcript, p. 25.

The Court will readily see that payments under this provision, if made for seventy-eight months only, would amount to but $58.50, but the provision itself requires payment until the share matures or is withdrawn, and therefore this clause of the certificate involves a determination of the meaning of the term "maturity" or "matures" in building and loan association practice and under the laws of New York.

"*Sixth:* At stated periods the profits arising from interest, premiums, fines and other sources shall be apportioned among the shares in good standing."

Transcript, p. 26.

"*Ninth:* The by-laws of this Association, which are attached to and endorsed hereon, *are a part of this contract*, and such by-laws and this certificate are to be construed together as part of the contract between the Association and the shareholder."

Transcript, p. 26.

"*Eleventh:* It is agreed by all shareholders of this Association that desire loans, that all money in the loan fund shall be sold at a uniform rate of ten per cent., bid as premiums on all loans."

Transcript, p. 26.

"*Fourteenth:* Any action brought against this Association shall be commenced within six months after filing proofs, and in the County of Onondaga, and State of New York."

Transcript, p. 26.

The law of New York, under which the Association was incorporated, is Chapter 122 of the Laws of

New York of 1851, as amended by Chapter 564 of the Laws of New York of 1875. Both of these laws were duly given in evidence and appear in the record.

Transcript, pp. 64, 68.

An examination of these laws will show that the Association is a purely mutual corporation, all of whose members must, under the law, stand upon a basis of perfect equality of interest in proportion to their several contributions to the capital stock of the corporation, and so it has been repeatedly held by the Courts of New York.

People *ex rel.* Fairchild *v.* Preston, 140 N. Y., 549.

Englehardt *v.* Loan Assn., 148 N. Y., 281.

These and other opinions and decisions of the courts of New York were given in evidence and duly proven upon the trial of this case.

O'Malley *v.* People's B. L. & S. Assn., reported in 92 Hun (N. Y.), at page 572; Transcript, pp. 71-74.

People *v.* Lowe, reported in 117 N. Y., at page 175; Transcript, pp. 75-82.

Concordia Savings & Aid Assn. *v.* Reed, reported in 93 N. Y., at page 474; Transcript, pp. 82-84.

Section Seven of Chapter 122 of the Laws of New York of 1851 provides:

"7. Every such corporation shall terminate except for the purpose of settling its affairs, whenever all the shares thereof shall be redeemed by advances thereon; or whenever the owners of unredeemed shares shall be paid the ultimate value thereof as provided in the articles of association and not sooner, but no dividend of principal or of profits shall be made until such termination; nor until all the debts of the association shall have been paid or otherwise sufficiently provided for. *No holder of redeemed shares shall claim to be exempt from*

making the monthly payments provided in the articles of association upon the ground that by reason of losses, or otherwise, the association has continued longer than was originally anticipated, whereby the payments made on such shares may amount to more than the amount originally advanced with legal interest thereon."

Transcript, p. 65.

Under this section of the Law of 1851, it will be seen that no dividend of *principal* or *of profits* could be made or paid to members until the final termination of the Association by the actual maturity of its stock; that is, the actual attainment upon the books of the corporation, as a credit to the stock, of the par value thereof, such par value to be attained either by the monthly payments made by members until maturity, or by such monthly payments plus profits duly credited to the stock under the Articles of Incorporation and By-Laws.

In 1875 the Law of 1851 was amended so as to permit the payment of dividends, *but only out of profits.* This provision in the Law of 1875 reads as follows:

"The trustees of any association formed under the provisions of this Act may from time to time declare dividends from the earnings of the Association payable in such manner as may be provided in the Articles of Association, but no dividend shall be declared *except from the earnings of the Association.*"

Transcript, pp. 66, 69.

The Act of 1875 expressly carried forward the provision that "no holder of redeemed shares (that is shares upon which loans have been made) shall claim to be exempt from making the monthly or other stated payments provided in the Articles of Associations, upon the ground that by reason of losses or otherwise the Association has continued longer than was originally anticipated, whereby the

payments made on such shares may amount to more than the amount originally advanced with legal interest thereon."

Transcript, p. 69.

The answer of the Association alleges, and the reply of the defendant in error admits, that he is an advanced or borrowing member.

Transcript, pp. 6, 7, Par. V. of Ans. and
Transcript, p. 8, "Reply."

Under these laws the plaintiff in error was incorporated, and its amended articles of incorporation, in force at the time that defendant in error made application for membership and received his stock certificate, appear in the record.

Transcript, pp. 47–53.

These articles were subsequently further amended by an annual meeting of stockholders on May 14, 1894, and the amended articles duly executed and filed as required by the laws of New York; and these amended articles of incorporation, as adopted in 1894, constituting the present charter of the corporation, were duly given in evidence and appear in the record.

Transcript, pp. 53–63.

It was *after* the adoption of these amended articles of incorporation of 1894 that the defendant in error made application to the Association for a loan or advance to him as a member upon his stock. His formal application bears date April 1, 1895.

Transcript, p. 46.

In this application it is recited that "in consideration of said loan or advance being granted as aforesaid, I hereby agree to comply with the Articles of Incorporation, By-Laws and regulations adopted by the Board of Directors of said Association."

Transcript, p. 46.

In his formal agreement, after notice that the preference of an advance or loan had been accorded to him, the defendant in error recites that he is "the owner of twenty-five shares of the stock of the Eastern Building and Loan Association of Syracuse, N. Y."; that he has "obtained a loan from said Association of $937.50 *upon said shares* under and in pursuance of the Constitution and By-Laws of said Association, *which said Constitution and By-Laws are hereby referred to and made part of this instrument.*"

Transcript, pp. 46, 47.

The agreement then binds him to pay interest and premium on the loan or advance until the maturity of the stock pledged as collateral, and upon which the advance is made and "to keep and perform all promises and engagements entered into with said Association according to the true intent and meaning of its By-Laws and Constitution."

Transcript, p. 47.

At this time the amended articles of incorporation of May 14, 1894, were in full force and effect and contained the following provisions in relation to stock and stock maturity:

"The stock of the Association shall consist of shares of the maturity or par value of $100 each to be known as fully paid stock, classes A and B, paid up stock and instalment stock, classes A and B, which will be issued in monthly series if the Board of Directors shall so determine."

Transcript, p. 58; Amended Articles of Incorporation, Art. VIII., § 2.

"*Instalment stock shall mature and be payable when the dues paid thereon with the profits apportioned and credited thereto shall equal $100 per share.*"

Transcript, p. 58; Amended Articles of Incorporation, Art. VIII., § 3.

There is no dispute that the stock subscribed for and issued to the defendant in error was instalment stock.

Both the original and amended articles of incorporation provided that "the monthly dues per share shall be seventy-five cents."

Transcript, p. 50; Original Articles of Incorporation, Art. IX.

Transcript, p. 59; Amended Articles of Incorporation, Art. IX., § 4.

The original articles of incorporation in force at the time that defendant in error became a stockholder, provided that shares might be withdrawn by members before maturity, but the right of withdrawal was *limited to unpledged* shares and was further limited so as to prohibit the withdrawal by the member of any sum in excess of his contributions to the capital stock of the corporation with a certain proportion of the profits thereon, not in excess of the net earnings of the stock. The language of the articles of incorporation upon this point is as follows:

"Shares *which are not pledged* may be withdrawn before maturity, provided the same are in good standing and all dues and fines have been paid to date. * * * Upon such withdrawal the holder will be entitled to receive thereon the amount of the monthly instalments that have been paid with such additional interest, if any, as the By-Laws may provide, *except that the same shall not exceed the net earnings of said stock.*"

Transcript, p. 51; Original Articles of Incorporation, Art. XII.

These original articles also provided that "the amount to be paid to the owners of shares at maturity shall be $100 per share."

Transcript, p. 52; Original Articles of Incorporation, Art. XV.

These original articles of incorporation reserved an unqualified power of amendment to the stockholders at their annual meetings.

Transcript, p. 53; Original Articles of Incorporation, Art. XIX.

It was in accordance with this reserved power of amendment that the amended articles of incorporation were adopted on May 14, 1894.

Transcript, pp. 53–63.

It was under these laws and articles of association that the defendant in error became a stockholder in and member of the Association, and, as we have already shown, the stock certificate, while attempting in its face to fix a definite period of maturity, such attempt being evidently based upon an estimate of prospective profits, yet nevertheless also provided that it was issued upon specific terms and conditions, and that the by-laws printed on the back of the stock certificate constituted a part of the contract of membership. The by-laws so printed on the back of the certificates issued to the defendant in error contain the following provisions, which seem to be material upon the Federal questions arising in this case:

"The terms and conditions expressed in the certificates of stock in connection with the application for membership and the By-Laws of this Association form the contract between this Association and each shareholder therein."

Transcript, p. 31; By-Laws, Art. XIV., §§ 1, 2.

"Each share of stock shall be charged with any and all amounts that may be owing from the shareholder or his assigns to the Association, whether in dues, loans, fines, interest or premiums, and all certificates of stock in said Association shall, whether mentioned therein or not, be subject to a lien thereon to secure any such indebtedness, and the right to

deduct and withhold the amount of any such indebtedness is hereby expressly reserved to the Association."

Transcript, p. 33; By-Laws, Art. XIV., § 13.

"All shareholders shall pay or cause to be paid a monthly instalment of seventy-five cents on each share named in their certificate *until the same shall be fully paid.*"

Transcript, p. 63, By-Laws; Art. XIV., § 14.

"If shares are withdrawn at any time before maturity the holders thereof will be entitled to receive the amount paid into the loan fund in monthly payments. After six payments have been made on stock the holder thereof can withdraw his monthly instalments that have been paid to the loan fund with interest at the rate of six per cent. per annum, seven per cent. after two years and eight per cent. after three years."

Transcript, p. 33, By-Laws; Art. XIV., § 18.

The funds of the Association were, under said by-laws, divided into two classes known as the Loan and Expense Funds. The Association, being purely mutual, was compelled, in the first instance, to take from the contributions of its shareholders a certain percentage for expenses. The remainder of the payments of shareholders into the capital stock went into the loan fund. It was these payments into the loan fund, plus the actual earnings thereon or a certain percentage of such earnings, that members were to be permitted to withdraw.

Transcript, p. 30; By-Laws, Art. XI., §§ 1, 2.

The amended articles of incorporation of 1894, as in force at the time that the advance or loan was made to the defendant in error, provided that:

"Whenever the dues or monthly instalments on any shares upon which advances or loans have been made shall, with the earnings credited thereto, amount to the face value of said shares, the same shall be redeemed and shall be cancelled, together with all securities given therewith, except where advances have been made on shares on the security thereof alone and the same has matured as aforesaid, the maturity or face value thereof shall be paid less the amount of the advance made thereon, unless the loan or advance shall have been previously paid."

Transcript, p. 61; Amended Articles of Incorporation, Art. XI, § 2.

The advance or loan to the plaintiff was made upon the collateral security of his stock certificates alone, and admittedly the dues or monthly installments paid by him on his stock, with the earnings credited thereto, do not amount to the par or face value of the stock. Nevertheless his contention is as stated in his complaint: "That by the said contract the time of the maturity of the said shares was rendered definite and the payment of the said $100 per share upon the said monthly payments being duly made was fixed and contingent upon no circumstances."

Transcript, pp. 2, 3.

The only claim of the defendant in error as to the payments made by him to the Association is "that the plaintiff paid the membership fees aforesaid, and for the full term of seventy-eight months paid to the defendant each month the sum of $18.75," this being the payment of seventy five cents per share per month upon the number of shares held by the defendant in error.

Transcript, pp. 2, 3.

We again call the attention of the Court to the fact that these seventy-eight payments of $18.75 by

the defendant in error only equaled, as the amount paid in by him upon his several shares of stock, the sum of $58.50 per share, and yet his claim is that because of the provision in the stock certificate above referred to, he is entitled to withdraw from the Association $100 per share upon his stock without regard to the earnings or profits of the Association or the rights of other members. Yet, the laws of New York, under which the plaintiff in error is incorporated, have always provided that borrowing members shall not "claim to be exempt from making the monthly payments provided in the Articles of Association upon the ground that by reason of loss or otherwise, the Association has continued longer than was originally anticipated, whereby the payments made on such shares may amount to more than the amount advanced with legal interest thereon."

Transcript, p. 65; Ch. 122 of Laws of New York of 1851, § 7.

Transcript, p. 69; Ch. 564, Laws of New York of 1875, § 1, amending § 7 of the Law of 1851.

Having carried his stock from 1891 to 1895, defendant in error became a borrower or advanced member, as already shown, in April, 1895. He did not borrow the full par value of his shares, because he gave no security, but the shares themselves upon which his payments at that time did not nearly amount to the par value of the shares. An examination of the complaint and answer will show the respective payments and indebtedness of the parties. There seems to be no dispute over the figures. The entire controversy is over the question whether the defendant in error is entitled to treat his shares as worth $100 per share at the expiration of the period of seventy-eight months from the date of their issue, and withdraw the same at par, or whether such shares only represent in value the amount paid in thereon by

the defendant in error of $58.50 per share plus earnings, if any, and less the expenses of the Association deducted upon the *pro rata* basis, or under the expense fund by-law above quoted.

Transcript, pp. 2–4, Complaint; pp. 4–7, Answer; p. 8, "Reply."

There can be no doubt that at the time defendant in error became an applicant for stock in the Association, he understood that the seventy-eight months' period when the stock was supposed to mature was an *estimated period*, based upon the prospective earnings of the corporation. Defendant in error (plaintiff below) himself testified upon this point as follows:

"Mr. Carpenter (the agent of the Association) had a statement with him of the calculations, and he made it for me and others, made it more than once, showing that it could be done. I made a rough calculation of it and it looked to me as possible. The interest was compounded monthly and it was a pretty good rate of interest they were getting, which compounded monthly. At that rate and deducting reasonable expenses it *ought to have matured the stock*. There is no question about their saying they could do it. They had a statement showing they could do so, and their literature all said they could do it and that there was no question about it. Mr. W. C. Coker took some stock in it and he made a calculation on the subject."

"Q. Did you see the calculation made by Capt. W. C. Coker?

"A. I didn't see the calculation, but it is a fact that can be mathematically demonstrated that money loaned at ten per cent. interest and payable annually—not monthly—will double itself in 7 and $\frac{11}{100}$ of a year, that is 7 years and 3 months. That is a whole sum loaned at 10 per cent. compounded annually. This was for a greater rate than 10 per cent. and compounded monthly."

Transcript, p. 18.

It is manifest from this testimony that the defendant in error at the time he subscribed for stock of the Association clearly understood that the maturity of the stock at the expiration of seventy-eight months was dependent upon the earnings of the Association, based upon the theory that the money loaned at the rate of interest that it was authorized by law to charge, in the form of "premium and interest," compounding the interest monthly, would make the book value of the stock in seventy-eight months equal to its par value. That is, his assumption and the assumption of the Association at that time was that payments of seventy-five cents per month for seventy-eight months, immediately loaned out at a given rate of interest and premium, the same to be compounded monthly, would result in earnings sufficient to make the book value of the stock upon the books of the Association equal to its par value in seventy-eight months. That this estimate was an erroneous one, and that the stock had not matured and was not upon the books of the Association at its par value at the expiration of seventy-eight months from the date of its issue, is shown by the undisputed evidence in the record.

The total number of shares held by the defendant in error was twenty-five, their par value in the aggregate being $2,500, or $100 per share. Defendant in error had borrowed from the Association, under his rights as a member and pledging his stock as collateral, the principal sum of $937.50.

Transcript, p. 28; Evidence of Nathan C. Visscher.

Upon this loan, under the contract between the parties and the articles of incorporation and by-laws of the Association, defendant in error was obligated to pay $6.25 per month as premium and interest upon the loan or advance.

The condition of the account of the defendant in error as a borrowing member at the time of the

commencement of this action was that the defendant in error was indebted to the Association in the principal sum of $937.50, having paid his interest and premium at the agreed rate of $6.25 from April 1, 1895, to August 1, 1897.

Transcript, p. 40; Testimony of Nathan C. Visscher, Qs. 21, 22 and Ans.

This witness further testifies, and his evidence is uncontradicted, that, at the time of the commencement of this action, defendant in error was indebted to the Association in the principal sum of $937.50, and for interest and premium from August 1 to January 1, 1898, five months, at $6.25 per month, $31.25; and to fines at the rate of twenty cents per share per month, for said five months, amounting to $25, making a total indebtedness on said stock loan of $993.75.

Transcript, pp. 40, 41; Evidence of Nathan C. Visscher, Qs. 22, 23, and Ans.

This witness clearly explained the status of the stock of defendant in error upon the books and under the practice of the Association.

He was asked: "When does a share mature?" He answered: "When the dues paid in thereon, plus its *pro rata* share of the earnings apportioned and credited equals $100."

Transcript, p. 40; Evidence of Nathan C. Visscher, Q. 20 and A.

He was asked: "On the 10th day of January, 1898, when this action was commenced, had the twenty-five shares of stock in question matured or reached their par value of $100 per share?" He answered: "No." He was asked: "What was the value of said shares at the commencement of this action on January 10, 1898?" He answered: "On certificate 4989, which represents ten shares of stock, the total value of said shares on January 1, 1898, was $624.30; on

certificate 4990, representing fifteen shares, the total value of the same on January 1, 1898, was $936.45." He was asked: "How do you arrive at the withdrawal value of the shares in question?" He answered: "By computing the dues paid thereon, less the expense fund of ten cents per share per month, in accordance with § 1 of Art. XI., of the By-Laws, and adding to that remainder its *pro rata* share of the earnings of the Association."

He was asked: "For how many months has plaintiff made stock payments of seventy-five cents per share upon the twenty-five shares of stock held by him in the defendant?" He answered: "For seventy-eight months," and further stated that the total amount of the stock payments made by him for the seventy-eight months on the twenty-five shares of stock (par value $2,500) amounted to but $1,462.50. He then testified that the Association had deducted from the monthly payments made upon the stock ten cents per share per month for the seventy-eight months for the expense fund of the Association as authorized by the by-laws, and that this expense fund deduction for the seventy-eight months upon the twenty-five shares of stock amounts to $195. He then shows that deducting this expense fund from the total amount of installments paid in upon the stock leaves a net balance paid upon the twenty-five shares and going into the loan fund of the Association of but $1,267.50.

He then testifies in detail as to the dividends or apportioned profits credited to the twenty-five shares of stock held by the defendant in error and represented by two stock certificates and expressly swears that the defendant Association has credited the plaintiff's shares of stock with all the dividends which have been apportioned to it since he subscribed for the same.

The evidence of Nathan C. Visscher from which these figures are taken appears upon pages 40, 41 and 42 of the transcript.

It will be seen from this undisputed evidence that

the total book or withdrawal value of the 25 shares of stock held by defendant in error on January 10, 1898, was $1,560.75, as against which he was indebted in the sum of $993.75, leaving a balance due him of $567 as the withdrawal value of his stock, assuming that upon the facts shown by this record he was entitled to withdraw the stock, which plaintiff in error denies. But instead of a judgment for this amount, the jury found a verdict in favor of defendant in error (plaintiff below) for $1,805.53, upon which a judgment for the same amount was entered on March 20, 1900, and that judgment was upon appeal affirmed by the Supreme Court of South Carolina, from which judgment of affirmation this writ of error is prosecuted.

Transcript, p. 96.

It further appears from the record in this case that the defendant in error undertook to serve notice of the withdrawal of his stock on October 27, 1897. He then claimed that he was entitled to withdraw the stock at its full par value of $2,500, but admitted that the Association was entitled to deduct the amount that he claimed he still owed the Association as an advanced or borrowing shareholder. The demand for the payment of the stock at its par value was refused by the Association on the ground that the shares of stock had not matured and reached their par value of $100, and that he had no right to withdraw his stock because the same had been pledged as collateral security for the payment of his indebtedness to the Association.

Transcript, p. 43; Evidence of Nathan C. Visscher, Qs. 47, 48, 49 and Ans.

That under the by-laws and articles of association of the plaintiff in error the defendant in error was not entitled to withdraw his stock if the same had not matured, that is was not entitled to payment of his withdrawal at the time he began

this action and obtained his judgment, is also shown by the testimony of the witness Visscher as well as by that of D. A. Pierce, Esq.

Transcript, pp. 42, 43; Qs. 38–46 and Ans., and Transcript pp. 44, 45; Evidence of D. A. Pierce

It appears from this testimony that the stock of the defendant in error was not due and payable upon withdrawal, because not reached for payment in its regular order even at the amount due as its withdrawal value under the articles of association and by-laws of the plaintiff in error, and that as pledged stock it was not subject to withdrawal.

Transcript, pp. 42 and 43; Amended Articles of Incorporation, Art. X., § 2, Transcript, p. 60.

The case of the defendant in error (plaintiff below) having been submitted upon the foregoing facts and evidence, the federal questions upon which this writ of error rests were brought into the case by the requests of the plaintiff in error (defendant below) for charges to the jury, by the charge of the Court and by the exceptions of the plaintiff in error (defendant below) to the Court's charge.

We now direct the attention of the Court to the federal questions thus raised and appearing upon the face of the record in this case.

Federal Questions.

The plaintiff in error (defendant below) at the close of the evidence, submitted to the Court fifteen specific and separately numbered requests for charges. These requests, upon their face, raise several federal questions, and we direct the attention of the Court to the requests as a whole.

Transcript, pp. 84–86; "Defendant's Requests to charge."

As presenting tersely the several federal questions arising, we quote the following requests to charge:

"I.—I charge you that the contract is to be governed and construed by the laws of the State of New York, as the contract was made there and was to be performed there.

"III.—I charge you that if you find that the defendant was incorporated under Chapter 122 of the Laws of 1851 of the State of New York and the Acts amendatory thereof, that said laws are given in this Court the same faith and credit as they have, by law or usage, in the Courts of New York, in accordance with the provisions of Section 905 of the Revised Statutes of the United States.

"V.—If you find that the defendant Association was incorporated under Chapter 122 of the Laws of 1851 of the State of New York and the Acts amendatory thereof, and as the plaintiff contracted with the defendant then I charge you that he is bound by such laws and is not exempt from making the monthly or other stated payments provided for in the Articles of Incorporation and By-Laws upon the ground of having made a fixed number of monthly payments, regardless of the fact whether such payments and the earnings of the defendant have brought theplaintiff's stock to the par value of $100 per share."

"VII.—I charge you that under the terms of the contract of membership and the contract of loan, the By-Laws and Charter, the transaction between the plaintiff and defendant does not terminate merely upon making a fixed number of payments, but only when the dues paid in by him with the profits apportioned to his shares make them equal their par value, $100 per share."

"VIII.—I charge you that as the plaintiff procured an advance or loan from the defendant, and having

assigned his stock as collateral security therefor, cannot withdraw from the Association, as he contracted to remain a member until his stock reached its par value of $100 per share."

"XII.—I charge you that as the plaintiff procured the amount borrowed under the By-laws, as he alleges, and as his contract of loan made the By-laws and Charter a part of the said contract, that he is estopped from claiming under them and against them at the same time, and that he is not exempt from making the monthly payments as they provide until the amount of dues paid in by him, plus his *pro rata* share of the profits, has brought his stock up to its maturity value of $100 per share."

"XIV.—If you find that at the commencement of this action that the defendant did not have money in its treasury applicable to plaintiff's claim, then you will find for the defendant."

"XV.—I charge you that the plaintiff was charged with notice of the provisions and requirements of the Articles of Incorporation, By-laws and the laws of New York under which the defendant was organized and conducted its operations."

See Transcript, pp. 84, 85, 86.

The Court charged the jury without regard to these requests, and the charge in full appears in the record.

Transcript, pp. 86–91; "Charge."

At the close of this charge, the trial Judge refused defendant's requests to charge in these words: "I will say that the requests that have been handed up by the defendant for me to charge, I do not deem applicable to the case in the view that I take, and they are therefore refused."

Transcript, p. 90, bottom of page.

The trial Judge in his charge, expressly told the jury that if the defendant in error (plaintiff below) was to recover, his recovery must be the full par value of his stock. "There is no ground for you to give a compromise verdict to give him a few hundred or a greater number of dollars, but you must either give the plaintiff the full amount he claims or give a verdict in favor of the defendant."

Transcript, p. 90; "Charge."

By proper exceptions to the action of the trial Judge in refusing the defendant's requests to charge, and in giving the charge that was given, the plaintiff in error (as defendant below) saved and reserved all the questions raised by its requests to charge.

See the "Exceptions" in full; Transcript, pp. 91–93.

Upon appeal to the Supreme Court of South Carolina, the judgment of the lower Court was affirmed and that Court, while having its attention called to all of the requests to charge and the exceptions in the Court below, held that no error had been committed in the trial Court, and upon the strength of an opinion rendered on a previous appeal from an interlocutory order, taken in advance of the trial of the case, refused to further consider the law questions involved and left the plaintiff no remedy except through a writ of error to this Court upon the ground that the courts of South Carolina had refused to give "full faith and credit" to the laws of New York as required by the Constitution of the United States, and had denied to the plaintiff in error "the equal protection of the laws."

In support of the contentions of the plaintiff in error, we submit the following brief:

BRIEF.

I.

UNDER THE LAWS OF NEW YORK PLAINTIFF IN ERROR IS A PURELY MUTUAL CORPORATION, WHOSE STOCKHOLDERS HAVE EQUAL, MUTUAL AND RECIPROCAL RIGHTS, DUTIES AND OBLIGATIONS, AND NO ONE OF WHOM CAN LEGALLY BE ACCORDED, IN THE STATE OF NEW YORK, ANY ADVANTAGE, PREFERENCE OR PRIORITY OVER ANOTHER.

Chapter 122, Laws of New York, of 1851, Transcript, pp. 64–68.
Chapter 564, Laws of New York, of 1875, Transcript, pp. 68–71.
Englehardt *v.* Fifth Ward Assn., 148 N. Y., 281.
People *v.* Lowe, 117 N. Y., 175, 180; s. c., Transcript, pp. 75–82.
Concordia Savings, &c., Assn. *v.* Reed, 93 N. Y., 474; s. c., Transcript, pp. 82–84.
O'Malley *v.* People's B., L., &c., Assn., 92 Hun (N. Y.), 572; s. c., Transcript, pp. 71–75.
Watson *v.* Columbia Mutual B. & L. Assn., 71 App. Div. (N. Y.), 498.

"A mutual savings fund and loan association is purely a co-operative society, consisting of a partnership in the profits of money as a money-maker, equitably distributed in proportion to the severalties of capital furnished by the individual members thereof."

Wrigley on Building Associations, p. 16.

"A corporation of this character is in one aspect a limited copartnership."

Coltrane *v.* Blake (U. S. C. C. A.), 113 Fed. Rep., 785, 788.
Tilley *v.* Building Assn., 52 Fed. Rep., 618, 622.
Silver *v.* Barnes, 6 Bing. (N. C.), 180; 8 Scott, 300; 37 Eng. Com. L., 335.
Robertson *v.* Homestead Assn., 10 Md., 397; s. c., 69 Am. Dec., 145.
Thompson on Bldg. Assns. (2nd ed.), §§ 3, 4.
Endlich on Bldg. Assns. (2nd ed.), § 338.

II.

DEFENDANT IN ERROR, AS A BORROWING OR ADVANCED MEMBER OF THE EASTERN BUILDING AND LOAN ASSOCIATION WHOSE STOCK HAS BEEN REDEEMED AND THE CERTIFICATES PLEDGED AS COLLATERAL TO THE ASSOCIATION IS, BY THE STATUTE LAW OF NEW YORK UNDER WHICH THE ASSOCIATION IS INCORPORATED, EXPRESSLY PROHIBITED FROM WITHDRAWING THE STOCK UNTIL ITS MATURITY.

Chapter 122, Laws of New York of 1851, § 7; Chapter 564, Laws of New York of 1875, § 1, amending § 7 of the Act of 1851; Transcript, pp. 65 and 68; *ante*, pp. 6 and 7, "State ment of the Case."

No better review of the *status* of the defendant in error as a borrowing member of the Eastern Building and Loan Association can be made than will be found in a case involving the contracts of

this association with its borrowing members heretofore decided in this Court.

Bedford *v.* Eastern B. & L. Assn., 181 U. S., 227; see particularly pp. 228–231, 237–239.

Manifestly, it would not do to permit borrowing members of the Association to withdraw their contributions to the capital stock of the corporation after they had become borrowing members upon such stock, because to do so would be to deprive the association of its right to hold their stock in pledge until maturity, and to require from them as borrowing members the payment of premium and interest upon the advances to them, from which source alone can the stock of the Association be matured.

Thompson on Bldg. Assns. (2nd ed.), § 134.

The effect of the contention of the defendant in error, and the result of the decision of the Supreme Court of South Carolina, can be succinctly stated and clearly demonstrated.

The record shows that the defendant in error, upon his twenty-five shares of stock in the Association, paid in thereon, in instalments of seventy-five cents per share per month for seventy-eight months, the gross sum of $1,462.50. From this sum, under the by-laws of the Association, $195 was deducted for the expense fund, leaving the *net* amount paid in by the defendant in error upon his twenty-five shares of stock $1,267.50, which sum, under the by-laws, went into the loan fund. Subsequently, the defendant in error borrowed from the Association, or caused his stock under his membership rights to be "redeemed" to the extent of an advance to him of $937.50. This left him with a balance of actual investment, represented by his payments on his stock, of but $329.50. That is, de-

ducting the amount of the advance, $937.50, from the $1,267 payment, by him into the loan fund, and this left the Association with but $329.50 of his money in its treasury. He was having the use of the balance himself, but, of course, was paying interest and premium thereon as required by the by-laws.

This was the situation of affairs at the expiration of the seventy-eight months' period from the date of the issue of the stock. Nevertheless, without regard to the provisions of the articles of incorporation forbidding him from withdrawing his pledged stock, and without regard to the fact that he was a member of the Association, entitled as such only to his *pro rata* share of the net earnings of the Association, he brought his suit to recover the full par value of his stock, namely, $2,500, and, under the decision of the Supreme Court of South Carolina, is permitted to recover the full amount. This may be "due process of law." It certainly is not either equity or justice. It scarcely affords to the Association "the equal protection of the laws," because under this decision the rights of members of the Association as against it and of the Association as against its members, are one thing in New York, and an entirely different thing in South Carolina. It seems to us, however, that upon the facts shown by this record, there cannot be the slightest doubt that the Supreme Court of South Carolina has refused to give "full faith and credit * * * to the public acts, records and judicial proceedings" of the State of New York.

There can be no doubt that the amended articles of incorporation of the Association, as adopted in May, 1894 (*ante*, p. 8), are binding upon defendant in error as a member of the Association. These amended articles were regularly adopted at an annual meeting of stockholders in May, 1894.

Transcript, p. 53.

The record affirmatively shows that *all* stockholders were notified of said meeting, and that the amended articles were "unanimously adopted."

Transcript, pp. 53, 54, Exhibit "M."

Nearly a year afterwards, in April, 1895, such amended articles of incorporation having been in force all that period, defendant in error made application for and obtained a loan or advance, in accordance with the provisions of the amended articles.

Transcript, pp. 46, 47, Exhibits "I," "J," "K."

Transcript, pp. 38–41, Evidence of Nathan C. Visscher, Qs. 10–23, and answers thereto.

These amended articles provide that "instalment stock shall mature and be payable when the dues paid thereon, with the profits apportioned and credited thereto shall equal $100 per share."

Transcript, p. 58, Amended Articles of Incorporation of 1894, Art. VIII., § 3.

The right of a member to withdraw his stock before its maturity is a privilege and not an absolute right, and under both the original and amended articles of incorporation of plaintiff in error this right is granted to instalment stockholders only when their stock is not pledged and has not been made the basis of an advance.

"Instalment shares which are not pledged may be withdrawn before maturity, provided the same are in good standing and all dues, claims and fines thereon have been paid."

Transcript, p. 60, Amended Articles of Incorporation of 1894, Art. X., § 2.

Transcript, p. 51, Original Articles of Incorporation, Art. XII.

III.

THE STOCK OF THE DEFENDANT IN ERROR HAD NOT MATURED AT THE EXPIRATION OF THE SEVENTY-EIGHT MONTHS' PERIOD, AND THIS BEING AFFIRMATIVELY SHOWN BY UNCONTRADICTED EVIDENCE, DEFENDANT IN ERROR WAS NOT ENTITLED, UNDER THE LAWS OF NEW YORK, TO RECOVER THE PAR VALUE OF HIS STOCK FROM THE PLAINTIFF IN ERROR.

The term "maturity" of stock in a building and loan association has a fixed, definite and well settled legal meaning.

"When the payments to the Association, together with the distributive profits, after the deduction of expenses, equal the face value of the stock, then the stock is *matured*, the certificates are then called in and the holder receives the face value thereof in cash."

Thompson on Building Associations (2d Ed.), § 4, p. 9; see also § 134.
Endlich on Building Associations (2d Ed.), §§ 117, 118, 461, 463.

"When a man becomes a shareholder in a building and loan association he pays a certain sum each month until the aggregate amount paid, increased by profits, equals the maturing value of the share, which is usually $200. * * * The capital of the association is thus made up of the savings and interest upon the savings of its members, and is increased from month to month and from year to year."

New International Encyclopædia (1902), Vol. 3, p. 584, Tit., Building and Loan Assns.

"The agreement to pay $100 for each share at the end of 6½ years from the date of the certificate is expressly subordinated to the terms, conditions

and by-laws above quoted, showing the manner and conditions of payment, by indicating the only method by which the shares might be matured; that is, by the making of monthly payments thereon, until the sum of all such payments, together with the profits apportioned to the shares, should amount to $100 for each share."

Racer *v.* International B. & L. Assn. (Ind.), 63 N. E. Rep., 772; 17 Am. & Eng. Corp. Cas. (N. S.), 17.

It will be noted that the case just cited involved a stockholders' contract identical with the one in the case at bar, under a by-law which provided, as do the by-laws of plaintiff in error, that: "All shareholders shall pay or cause to be paid, a monthly installment of seventy-five cents on each share named in his or her certificate until the same shall be *fully paid*" (17 Am. and Eng. Corp. Cas. (N. S.), p. 21). This is identical with the by-law of plaintiff in error, in which the term "fully paid" occurs (Tr., p. 33, By-Laws, Art. XIV., § 14). Yet the Indiana Court reaches an exactly opposite conclusion from that reached by the opinion in the case at bar. We respectfully insist that the rule laid down in the Indiana case is the true one, supported by a great weight of authority, as we shall show, and we submit that under such circumstances this Court should reverse the judgment of the Supreme Court of South Carolina.

"The one dollar which is paid in each month is called 'dues' and when the share has reached the value of $100 it is called a 'matured share.' It represents $100 of accumulated savings." The shareholder pays one dollar each month upon his share, "until the small sums thus paid, increased by the dividends added to them by the Association amount to the sum of $100. When this amount is reached. a stockholder surrenders his share of stock and the Association pays him $100 in one sum."

Dexter on Co-operative S. & L. Assns., Ch. 3, p. 17.

It is such payment of a share until its full par value has been attained by payments made and dividends credited that constitutes "maturity" and makes the share "fully paid" under the building and loan association plan.

In the case at bar the payment of seventy-eight monthly payments of seventy-five cents per share would amount upon each share of the par value of one hundred dollars to but $58.50. Hence to require the Association to pay to each member one hundred dollars per share, unless the net earnings of the association distributable among the stockholders have brought the *book* value of the stock to its *par* value, is a manifest impossibility.

It follows that any contract among the members that their stock shall mature and be paid at its *par* value in seventy-eight months is dependent upon the *net* earnings of the Association distributable among the members upon the principle of mutuality, and if the profits are not sufficient to attain that end the contract is clearly unenforceable, because mutual corporations cannot guarantee profits to stockholders and the law of New York forbids the payment of unearned dividends.

Transcript, p. 68, Laws of New York, of 1875, Ch. 564, § 1, amending § 7 of Ch. 122, Laws of 1851.

1 Morawetz on Corp. (2d Ed.), § 436.

"All members must participate equally in the profits and bear the losses, if any, in the same proportion. This is the fundamental law of building and loan associations organized under the different statutes throughout the Union. The provisions in the borrower's notes and deeds of trust sought to be released to the effect that the shares of stock pledged to secure their payment shall reach their full par value at the end of one hundred months and the securities canceled and satisfied *regardless of the earnings of the association* is clearly subversive of the legislative scheme governing building and loan

associations and contrary to the clear letter and spirit of our statutes. * * * One who becomes a member of an association becomes chargeable with a knowledge of the provisions of its charter and by-laws and is bound by them. * * * The provisions of the by-laws, as already seen, provide for the payment of dues, interest, &c., by stockholders until such time as their stock shall mature and the stock be worth its full par value; and if the borrowers did not read the by-laws it was their fault. The association being organized under a mutual plan must treat all of its members equally, and any contract whereby one stockholder obtains a greater share of profits than another would be violative of the principle of mutuality between stockholders. *The plain principles of justice and honesty clearly forbid that one class of stockholders equally meritorious should be compelled to suffer that others may profit thereby.*"

Bertche *v.* Equitable L. & I. Assn., 147 Mo., 343; s. c., 48 S. W. Rep., 954, 958.

Schell *v.* Equitable L. & I. Assn., 150 Mo., 103; s. c., 51 S. W. Rep., 406, 407.

This is not a question of an *ultra vires* contract enforceable against one party because performed by the other. The question is of a totally different nature. The contract is not unenforceable on the ground that it is *ultra vires*, but on the ground that it is impossible for members of a purely mutual corporation to hold the corporation to an agreement made with *all* of them to pay them back their total contributions to the corporate capital at a definite time and with a definite amount of profits thereon. If the profits have not been earned, compliance with the contract is impossible, because one member cannot be robbed to pay another, and the corporation has no funds except the payments of dues by its members and the profits realized from the lend-

ing of its capital to its borrowing members from which to pay its stockholders their claims.

Englehardt *v.* Loan Assn., 148 N. Y., 281.
People *v.* Lowe, 117 N. Y., 182.
People *ex rel.* Fairchild *v.* Preston, 140 N. Y., 553, 554.
1 Cook on Corp. (4th Ed.), § 277.
Taylor on Corp. (5th Ed.), § 565.
1 Morawetz on Corp. (2d Ed.), §§ 444, 457.

"The agreement would operate to give the appellant an unjust preference, unless entered into with all other stockholders; and if entered into with all stockholders the obligation would be mutually binding upon all holders of stock. If the business of the corporation had not been sufficiently profitable to enable it to carry out the terms of the agreement, a question would be presented whether the agreement would be abandoned as to all, or enforced as against all. Corporations of this character are mutual in character. Indeed, the obligations of the shareholders are akin to those of partners in a copartnership. The plan of issuing stock containing such agreements is entirely foreign to the purposes of the corporation contemplated by the statute under which the one at bar was organized, and we cannot but regard it as of no force and effect, and it seems no injustice will befall any stockholder because of the invalidity of such an agreement. If the amount paid into the treasury of the union by way of installments and the earnings of the union equal the face value of the shares of stock, the shareholder would be in nowise benefited by an enforcement of the agreement. If, however, the amounts received from installments, together with the earnings, do not equal the face value of the stock, no shareholder could justly demand his fellow-shareholders should make up the deficiency to him, without the same obligation should

rest upon him to contribute to make good the deficiency as to each other share of stock, in which event he would lose as much as he would gain by an enforcement of the agreement."

King *v.* International, &c., Union, 170 Ill., 135; s. c., 48 N. E. Rep., 677.

No matter how it may be sought to evade the fact, the real gist of the claim in this case is that defendant in error should be repaid his contributions to the capital stock of the Association with a profit thereon amounting to upwards of *twenty per cent. per annum!!*

Such a profit is necessarily in the nature of a dividend. The payment of unearned dividends or unearned profits is expressly forbidden by the law under which the Association is incorporated.

Transcript, p. 68, Laws of New York of 1875, Ch. 564, § 1, amending § 7 of Ch. 122, Laws of 1851.

And the record shows that the earnings of the Association were not sufficient to "mature" the stock to its *par* value in seventy-eight months.

Transcript, pp. 41–43, Evidence Nathan C. Visscher, *Ante*, pp. 16–18.

"Another principle of general recognition is that a corporation cannot enter into or bind itself by a contract which is expressly prohibited by its charter or by statute, and in the application of this principel it is immaterial that the contract, except for the prohibition, would be lawful. No one is permitted to justify an act which the Legislature within its constitutional power has declared shall not be performed."

Bath Gas Light Co. *v.* Claffy, 151 N. Y., 24, 30, 31.

If the contract which the South Carolina Court in its opinion herein sustains, is to be treated as a

mere obligation for the payment of money, then the Court is forcing the plaintiff in error to pay usurious interest to the defendant in error at the expense of all other members. If, on the contrary, it is treated as it should and *must* be as a contract of corporate membership, then no matter by what term you denominate the payment of profits to appellant upon her investment it is in fact dividends.

1 Morawetz on Corp. (2d Ed.), § 457.

The term "fully paid" as applied to stock of a building and loan association has a legal meaning quite as well established as has the term "maturity."

"If the directors of a company wrongfully issue a certificate for paid up shares on account of shares which have not been paid up, their act will not bind the company and the certificate may be repudiated."

1 Morawetz on Corp. (2d Ed.), § 286.

It is only shares upon which their *par* value has been paid into the corporation that are or can be fully paid shares. Provisions in stock certificates that they are "non-assessable" will not make them fully paid.

1 Morawetz on Corp. (2d Ed.), § 427; see also *Id.*, §§ 95, 96 and 128.
Upton *v.* Tribilcock, 91 U. S., 45, 48.
2 Morawetz (2d Ed.), § 824, p. 795.
Taylor on Corp. (5th Ed.), § 522.

The only distinction between the stock of a building and loan association and that of an ordinary private corporation in this respect is that the net earnings of a building and loan association may be credited up to the stock of the several stockholders on the books of the association so as to "mature" the same; *that is, to pay the stock up to its par value,* when and when only, it becomes fully paid.

Thompson on Building Associations (2d Ed.), § 134, p. 258.

7 Thompson on Corp., §§ 8700, 8704, 8761.
Endlich on Building Associations (2d Ed), §§ 12, 14, 461, 476.

One effect of the opinion of the South Carolina Supreme Court in the case at bar is to lay down the rule that a corporation may sell its shares of the par value of one hundred dollars for little more than half their par value, and that at the same time it may contract that without regard to the profits of the corporation the stockholder may at a fixed time withdraw from the corporate capital stock the par value of the shares, no matter who suffers. Can this be the law of New York?

Compare
Taylor on Corp. (5th Ed.), § 522.
1 Morawetz on Corp. (2d Ed.), § 128.

IV.

THE SUPREME COURT OF SOUTH CAROLINA ERRS IN TREATING THE CONTRACT OF CORPORATE MEMBERSHIP BETWEEN PLAINTIFF IN ERROR AND DEFENDANT IN ERROR AS AN UNCONDITIONAL CONTRACT TO PAY MONEY AT A FIXED TIME, WHEN IT SHOULD HAVE HELD THAT DEFENDANT IN ERROR, AS A MEMBER OF PLAINTIFF IN ERROR, COULD ACQUIRE NO OTHER OR FURTHER INTEREST IN THE CORPORATE CAPITAL THAN AN EQUAL, UNDIVIDED INTEREST BASED UPON HIS CONTRIBUTIONS TO THE CAPITAL STOCK, AND HAVING DUE REGARD TO THE LIKE INTERESTS, RIGHTS AND EQUITIES OF ALL OTHER MEMBERS.

The Association, in the case at bar, cannot be dealt with as a legal entity independent of its shareholders. It is an exploded theory that a corporation

is not made up of its members. Where it is a purely mutual corporation, no one of the members can be permitted to assert and maintain a claim against the corporation which will destroy the mutuality of the company, accord to him preferences over other members in like attitude and disregard the fact that he is himself a constituent part of the corporation.

1 Morawetz on Corp. (2d Ed.), § 1; *Id.* §§ 227, 231, 234.

The Supreme Court of South Carolina, by its opinion in this case, destroys the mutuality of plaintiff in error and awards to defendant in error an undue share of the corporate capital in direct contravention of the law under which the Association is incorporated and in violation of the express provisions of its certificate of incorporation and by-laws.

The unwarranted and unauthorized issue of stock certificates, fixing a definite period of maturity contrary to the certificate of incorporation, the by-laws and the statutes under which the corporation is organized, cannot be binding upon the corporation so as to give one member an undue proportion of the corporate capital.

The capital stock being made up entirely of the contributions of its members and the issuance of a preferred stock being unauthorized, a member cannot recover back his total contributions to the capital stock with large profits thereon without first showing that such profits have been earned.

1 Cook on Corp. (4th Ed.), § 277.

The plaintiff in error is organized under Ch. 122 of the laws of New York of 1851. Section 1 of that Act shows the purely mutual nature of the corporation and *expressly* provides that members shall only be entitled to repayment of their stock "when the funds shall amount to a certain sum per share to be specified in the Articles of Association."

Laws of New York, 1851, Ch. 122, § 1, Transcript, p. 65.

The same law further provides that the corporation shall terminate "whenever all the shares thereof shall be redeemed by advances thereon or whenever the owners of unredeemed shares shall be paid the ultimate value thereof as provided in the articles of association," and in the same connection it provides that "no dividend of *principal* or of *profits* shall be made until such termination, nor until the debts of the association have been paid or otherwise sufficiently provided for."

Laws of N. Y., 1851, Ch. 122, § 7.

The amendment of the law in 1875 permitted the payment of dividends, but only out of profits.

Laws of N. Y., 1875, Ch. 564, § 1.

"The scheme clearly was that those contributions were to continue until the society had a cash capital of $1,000 for each share. * * * Every member was to stand upon an equal footing, the debtor and the creditor members."

People *v.* Lowe, 117 N. Y., 186, 187.

But as to redeemed, that is, borrowing members, the Law of 1851 provided that even though the estimated profits of the association might not be realized, and consequently the maturity period of the stock be extended, yet the payments of dues by the members must be continued.

"No holder of redeemed shares shall claim to be exempt from making the monthly payments provided in the articles of association, upon the ground that by reason of losses or otherwise the association has continued longer than was originally anticipated, whereby the payments made on such shares may amount to more than the amount originally advanced, with legal interest thereon."

Laws of 1851, Ch. 122, § 7.

Again, the Articles of Incorporation provide that: "In no case shall a withdrawal from the loan fund

exceed the amount of the installments paid thereto, together with the estimated amount of the earnings upon the same."

Transcript, pp. 51 and 52, Art. XII.

Then the By-laws provide that "all shareholders shall pay or cause to be paid a monthly installment of seventy-five cents on each share named in their certificate until the same shall be *fully paid*."

Transcript, p. 33, "Sec. 14."

In the light of the law under which plaintiff in error was organized and the foregoing provisions of its Charter and By-laws, can this Court sustain the proposition that plaintiff in error can enter into contracts with its stockholders by which they are guaranteed profits upon their stock without regard to the earnings, the profits and losses of the corporation?

7 Thompson on Corp., § 8761.
See 1 Cook on Corp. (4th Ed.), § 277.

To so hold is in effect to force the payment of unearned profits to stockholders, and this is in direct violation of the provisions of the Act of 1875, which amended the Act of 1851 above cited.

Laws of 1875, Ch. 564, § 1.

V.

THE SUPREME COURT OF SOUTH CAROLINA IN ITS OPINION HEREIN ERRS IN ESTABLISHING IT AS A RULE OF LAW THAT A PURELY MUTUAL CORPORATION, WITHOUT THE RIGHT TO ISSUE A PREFERRED STOCK OR CREATE PREFERENCES OF ANY KIND BETWEEN ITS MEMBERS, CAN BY THE TERMS OF A STOCK CERTIFICATE

CREATE SUCH PREFERENCES AND GUARANTEE PROFITS TO ITS STOCKHOLDERS, EVEN THOUGH NONE HAVE BEEN EARNED.

The statement of this proposition makes the decision of the Supreme Court of South Carolina herein seem so in conflict with settled principles of corporation law, that were it possible to put any other construction upon the opinion of the Court we would gladly do so. But no other construction of the opinion is possible.

THE ONLY LEGAL EFFECT OF THE DECISION IS TO LAY DOWN THE RULE THAT A CORPORATE STOCKHOLDER IS ENTITLED TO WITHDRAW HIS CONTRIBUTION TO THE CAPITAL STOCK WITH A LARGE PER CENT. OF PROFIT THEREON, BECAUSE A STOCK CERTIFICATE UNAUTHORIZED BY LAW AND THE CORPORATE CHARTER, UNDERTOOK TO GUARANTEE DIVIDENDS OR PROFITS AND A RETURN OF PRINCIPAL AT A DEFINITE TIME.

Yet the exact reverse of this doctrine has many times been held by this and other courts, and the proposition that a corporation cannot guarantee profits to its members has been assumed to be settled law.

1 Morawetz on Corp. (2d ed.), § 457.
1 Thompson on Corp., §§ 2152, 2236.
1 Cook on Corp. (4th ed.), § 277.
Taft *vs.* Hartford, &c., R. Co., 8 R. I., 310; s. c., 5 Am. Rep., 575.

Thus it is held that preferred shareholders whose dividends are guaranteed "can receive no profits when none are earned."

Boardman *v.* L. S. and Mich. S. Ry. Co., 84 N. Y., 173.
Taylor on Corp. (5th ed.), § 565.

And so it is settled law that the interest of a stockholder in a corporation is his undivided aliquot share in the capital and net earnings of the corporation.

Jermain *v.* Lake Shore, &c., R. Co., 91 N. Y., 483.

Burrall *v.* Bushwick R. Co., 75 N. Y., 211.

Plimpton *v.* Bigelow, 93 N. Y., 592, 600.

In the case at bar defendant in error is not a preferred or guaranteed stockholder, except in the same sense that all other stockholders are. His rights and equities are only the same as those of other stockholders. How, then, can his stock be paid in full at its par value out of the corporate capital stock when the undisputed proof is that the stock has not "matured" and does not represent its par value in the corporate capital? In other words, that the plaintiff in error has not assets sufficient to pay all stockholders the par value of their shares, and, therefore, defendant in error is not entitled to be paid the par value of his shares.

We have seen that the Articles of Incorporation of the plaintiff in error provide that even in cases where stockholders are entitled to withdraw, their stock being unpledged, the holder will be entitled to receive upon withdrawal only "the amount of the monthly instalments that have been paid with such additional interest, if any, as the by-laws may provide, *except that the same shall not exceed the net earnings of said stock.*"

Transcript, p. 51, Original Articles of Incorporation, Art. XII.

Do we need to seriously argue that these provisions of the Charter qualify the "terms and conditions" relating to withdrawals so as to *limit* such withdrawals to the amount paid in on stock with its net earnings? Is it not manifest that they do so

limit that right? Does it not follow that the charge of the trial Judge and the decision of the Supreme Court of South Carolina is erroneous and in contravention of the laws of New York?

The fact is that withdrawing stockholders can in no case withdraw more than the amount paid in by them with the actual net earnings thereof as a part of the capital of the association.

Transcript, p. 65, Laws of 1851, Ch. 122, § 2.

Articles of Assn., Transcript, p. 51, Art. XII.

In such cases the burden of proof is clearly upon the plaintiff.

Englehardt *v.* Loan Assn., 148 N. Y., 281.

Heinbokel *v.* National Saving, etc., Assn., 58 Minn., 340; s. c., 25 L. R. A., 215.

Texas Homestead, etc., Assn. *v.* Kerr (Tex.), 13 S. W. Rep., 1020.

The right of withdrawal is never an absolute right but always a limited and relative one, and except when the conditions authorizing a withdrawal or the repayment of a member's contributions to the capital of an association are affirmatively shown to exist, the member of a building and loan association has no more right to the repayment of his stock than the holder of stock in any private corporation would have.

Endlich on Building Associations (2d Ed.), §§ 99, 100, 102, 108.

Thompson on Building Assns. (2d Ed.), §§ 150 and 144.

A building and loan association cannot, by contract not expressly authorized by its charter and by-laws and the laws under which it is incorporated, discriminate between its members and bind itself to

pay to its members definite profits at a definite time without regard to the actual earnings of the corporation.

King *v.* International Assn., 170 Ill., 135, 142.
Bertche *v.* Equitable Loan Assn., 147 Mo., 343.
Schell *v.* Equitable Loan Assn., 150 Mo., 103.
Province *v.* Interstate Assn. (Tenn.), 58 S. W. Rep., 265.

The settled rule of law is, that no matter how unqualified may be the contract of an association with its members to pay them profits, it can only do so if profits have been earned.

1 Cook on Corp. (4th Ed.), §§ 271, 277.
1 Morawetz on Corp. (2nd Ed.), §§ 435, 436, 444, 457.
Lockhart *v.* Van Alstyne, 31 Mich., 76.

"The articles of association which showed the scheme of the organization and defined the obligations of the association and the rights of members, are binding upon each member thereof. They establish the relation between the association and the stockholder and constitute a contract between them."

Englehardt *v.* Loan Assn., 148 N. Y., 285.

"A subscriber for shares must at his peril not only ascertain the contents of the subscription paper which he signs, but also the provisions of the charter of the company or its articles of association and the general laws. * * * Every subscription for shares must necessarily refer to these and incorporate their provisions."

1 Morawetz on Corp. (2d Ed.), § 96.
2 Cook on Corp. (4th Ed.), § 493.
Taylor on Corp. (5th Ed.), § 512.
Bedford *v.* Eastern B. & L. Assn., 181 U. S., 227, 240.

In the case at bar, the charter of plaintiff in error, its by-laws and the laws under which it is incorporated all forbid the idea that it can issue stock certificates destructive of the principle of mutuality among its members and thereby bind itself to pay to stockholders profits that it is not shown to have earned.

Transcript, p. 65, Ch. 122 of Laws of New York of 1851, §§ 1, 2, 4, 7, 11.

Transcript, p. 68, Ch. 564, Laws of New York of 1875, § 1.

Articles of Incorporation, Transcript, p. 48, Art. II; p. 50, Art. IX.; p. 51, Art. XII.; p. 52, Art. XV.; p. 52, Art. XVII.

By-Laws, Transcript, p. 27, Art. I.; p. 27, Art. II., §§ 1, 2; p. 31, Art. XIV., §§ 1, 2; p. 33, § 14 of Art. XIV.

These Articles of Incorporation and By-Laws were adopted *before* any stock certificates were issued. They will be searched in vain for any authority to issue a stock certificate binding the association to pay back a member's contribution to the capital of the corporation at a definite time and with a definite profit thereon. The issue of such certificates, as we have already seen, is unauthorized by the laws under which plaintiff in error was incorporated. It follows that the contract to pay unless profits have been earned which will permit the payment is absolutely void.

1 Cook on Corp. (4th Ed.), § 277.

King *v.* International, etc., Assn., 170 Ill., 135; 48 N. E. Rep., 677, 679.

It would seem that as between plaintiff in error and defendant in error as a borrowing member of the association, there can be no doubt of the correctness of the contentions here made. This Court and the courts of last resort in several States have recognized their soundness.

Bedford *v.* Eastern B. & L. Assn., 181 U. S., 227.

Bennett *v.* Eastern B. & L. Assn., 177 Pa. St., 233; s. c., 55 Am. St. Rep., 723.

Campbell *v.* Eastern B. & L. Assn., 98 Va., 729.

Eastern B. & L. Assn. *v.* Snyder, 98 Va., 710.

Miller *v.* Eastern B. & L. Assn. (Tenn.), 53 S. W. Rep., 231.

Daley *v.* People's B. & L., &c., Assn., 172 Mass., 533; s. c., 52 N. E. Rep., 1090; Opinion, per Holmes, *C. J.*

VI.

THE SUPREME COURT OF SOUTH CAROLINA, BY ITS DECISION AND JUDGMENT IN THIS CASE, HAS REFUSED TO GIVE "FULL FAITH AND CREDIT * * * TO THE PUBLIC ACTS, RECORDS AND JUDICIAL PROCEEDINGS" OF THE STATE OF NEW YORK, AND, THEREFORE, UNDER § 1, ARTICLE IV. OF THE CONSTITUTION OF THE UNITED STATES, AND § 905 OF THE REVISED STATUTES OF THE UNITED STATES, THIS COURT IS REQUIRED TO REVISE THE JUDGMENT OF THE SUPREME COURT OF SOUTH CAROLINA AND TO AFFORD THE PLAINTIFF IN ERROR THE EQUAL PROTECTION OF THE LAWS BY RENDERING SUCH JUDGMENT HEREIN AS WILL GIVE TO THE LAWS OF NEW YORK THE SAME CONSTRUCTION AND EFFECT, AS A PART OF THE CONTRACT BETWEEN PLAINTIFF IN ERROR AND DEFENDANT IN ERROR, THAT SUCH LAWS HAVE IN THE COURTS OF THE STATE OF NEW YORK.

Constitution of the United States, Art. IV., § 1.

Revised Statutes U. S., § 905.

The Constitution substitutes for a mere rule of comity a rule of constitutional obligation, providing that full faith and credit *shall* be given in each State to the public acts, records and judicial proceedings of every other State. Under this constitutional provision the Supreme Court of South Carolina was required to give to the statutes of New York and the Articles of Association and By-Laws of the Eastern Building and Loan Association, made in pursuance of those statutes and proven as undisputed facts, constituting an integral part of a New York contract, the same faith, credit and effect given to them by the courts of New York in construing like contracts.

Cooley's Principles of Constitutional Law (2d ed.), § 203.

Chicago & Alton R. R. *v.* Wiggins Ferry Co., 119 U. S., 615, 622, 623.

The decisions of the courts of New York establishing the meaning, construction and effect of chapter 122 of the Laws of New York of 1851, and chapter 564 of the Laws of New York of 1875, were given in evidence and proven and admitted as undisputed facts in the Courts of South Carolina. It is upon these laws and decisions proven as facts, that this case must be decided.

Transcript, pp. 71–84.

O'Malley *v.* People's B., L. & S. Assn., 92 Hun (N. Y.), 572.

Englehardt *v.* Fifth Ward, etc., L. Assn., 148 N. Y., 281.

People *v.* Lowe, 117 N. Y., 175.

Concordia Savings, etc., Assn. *v.* Reed, 93 N. Y., 474.

The laws of New York above referred to were also given in evidence as undisputed facts in the case.

Transcript, pp. 64–71.

On this state of the record, we submit that the Supreme Court of South Carolina denied to plaintiff in error the "equal protection of the laws" in contravention of the XIVth Amendment to the Constitution of the United States, deprived plaintiff in error of its "liberty of contract" and of its property "without due process of law," and refused "full faith and credit" to the laws of New York.

We are aware that heretofore this Court has not passed upon the exact question upon which we now invoke its decision. Thus in the case of *Eastern Building and Loan Association* v. *Ebaugh*, this Court expressly pretermitted the determination of this question, saying upon this point: "We are not called upon, therefore, to review or reply to the very able argument of counsel for plaintiff in error advanced to show that the *situs* of the contract between the parties was New York, and that the words 'public acts' in Article IV., § 1 of the Constitution of the United States, mean the public statutes of the State."

Eastern Building & Loan Assn. *v.* Ebaugh, 185 U. S., pp. 114, 121.

It is to the consideration of this question, which we think must be expressly decided in this case and upon this record, that we now invite the attention of the Court.

The origin of the "full faith and credit" clause, embodied in § 1 of Article IV. of the Constitution, is clear, the reason for its existence manifest and the history of its adoption brief and explicit.

It has long been a settled doctrine of private international law in England and all common law jurisdictions, that the laws of one country forming an integral part of a contract entered into and performable in such country, are to be treated as a part of the contract when it comes before the tribunals of another country for enforcement, and, when properly proven, given the same meaning and

effect, the same faith and credit, that would be given them by the tribunals of the place of the contract.

Warrender *v.* Warrender, 9 Bligh., 115; 2 Cl. & F., 529, per Lord Brougham.
Bank of Augusta *v.* Earle, 13 Pet., 519.
Story: Conflict of Laws (8th ed.), pp. 36, 37, note (*a*).
Minor's Conflict of Laws, p. 5, § 4.
Robinson *v.* Queen, 87 Tenn., 445; 11 S. W. Rep., 38, 39.
Forepaugh *v.* Del., &c., R. Co., 128 Pa. St., 217; 5 L. R. A., 508, and note.
Fonseca *v.* Cunard S. Co., 153 Mass., 553.
Hilton *v.* Guyot, 159 U. S., 113.

"The first question to be considered is, what are the rules by which an English court ought to be governed in construing a foreign contract? Where a written contract is made in a foreign country, and in a foreign language, the Court, in order to interpret it, must first obtain a translation of the instrument; secondly, an explanation of the terms of art [if it contains any]; thirdly, evidence of any foreign law applicable to the case; *and fourthly, evidence of any peculiar rules of construction*, if any such rules exist, by the foreign law. With this assistance the Court must interpret the contract itself on ordinary principles of construction."

Lord Cranworth in Di Sora *v.* Phillipps and others, 10 H. of L., 624, 633.

"It may be laid down as the settled doctrine of public law that personal contracts are to have the same validity, interpretation and obligatory force in every other country which they have in the country where they were made."

2 Kent's Com., *458.
Cooper v. Waldegrave, 2 Beav., 282.

Thornton *v.* Dean, 19 So. Car., 583, 589.
Smith *v.* Elliott, 39 Tex., 202, 211.
Liverpool Steam Co. *v.* Phœnix Ins. Co., 129 U. S., 397, 448.

It will scarcely be denied that such was the doctrine of the English law at the time of the American Revolution and when the "Articles of Confederation," and, subsequently, the "Constitution of the United States," were framed.

Robinson *v.* Bland, 1 W. Bl., 234, 256, 258.
Lloyd *v.* Guibert, 6 B. & S., 100.
Peninsular, etc., Co. *v.* Shand, 3 Moore, P. C. C. (N. S.), 272; 11 Jur. (N. S.), 771; 13 W. R., 1049; 12 L. T. (N. S.), 808.
Ellis *v.* McHenry, 23 L. T. (N. S.), 862; 6 L. R. C. P., 228; 40 L. J. C. P., 109; 19 W. R., 503.
Don *v.* Lippman, 5 C. & F., 1.
Huber *v.* Steiner, 2 Scott, 304; 2 Bing. N. C., 202; 1 Hodges, 206.
Ferguson *v.* Fyffe, 8 C. & F., 121.

In order to secure this faith and credit to foreign laws, it was only necessary in the courts of England to prove such laws as matters of fact, and by evidence to establish the construction and effect of such laws at the *situs*, of the contract of which they formed a part.

Mostyn *v.* Fabigas, Cowp., 174;
Crawford *v.* Witten, Lofft., 154; 1 Dougl., 4 *n.*
Male *v.* Roberts, 3 Esp., 163 (Eldon).
Nelson *v.* Bridport, 8 Beav., 527; 10 Jur., 871.

After such proof of a foreign law and its interpretation was made, the English courts held themselves bound by it, and it was not a question of fact for a

jury but of law for the court as to the meaning and effect of the foreign law in the place of contract and of its enactment.

Copin *v.* Adamson, 9 L. R. Exch., 345; 31 L. T. (N. S.), 242; 43 L. J. Exch., 161; 22 W. R., 658.

Such being the rule of private international law between different independent nations when the American colonies came to form themselves first into a confederation of states and later into "a more perfect union," in which many of their rights of sovereignty and independence were merged, it was but natural that they should first recognize and then extend and establish as a part of their fundamental law that rule which previously had been a matter of international comity.

Hence we find in the Articles of Confederation that part of the rule relating to the records, acts and judicial proceedings of the different States, and the faith and credit to be accorded them in the other States was thus expressed: "Full faith and credit shall be given in each of these States to the records, acts and judicial proceedings of the courts and magistrates of every other State."

Articles of Confederation, Art. 4, § 3.

Manifestly this clause in the Articles of Confederation required full faith and credit to be given in all States (*a*) to the public records of each State, (*b*) to the public statutes or acts of each State, and (*c*) to the judgments and judicial proceedings of each State. However, like nearly all other provisions of the Articles of Confederation, it stopped short of the full accomplishment of its apparent purpose by not providing *a rule of evidence* which would be operative in and binding upon all the States of the confederation, sufficiently *authenticating* State records, acts and judicial proceedings. Hence when the Constitution of the United States was framed the clause in question was enlarged and extended so as

to read as follows: "Full faith and credit *shall* be given in each State to the *public acts*, records and judicial proceedings of every other State. And the congress *may* by general laws prescribe the manner in which such acts, records and proceedings shall be proved and the effect thereof."

Const. U. S., Art. IV., § 1.

In the language of Judge Cooley:

"By this provision a rule of comity becomes a rule of constitutional obligation. It also becomes a uniform rule, and the common authority is empowered to pass laws whereby the courts may govern their action in receiving or rejecting the evidences presented to them of the public acts, records and judicial proceedings of other States. Nor is this of more importance to the States as such than to those whose individual interests may be involved or affected; and, indeed, the interests involved are usually private and individual rather than public.

"The full faith and credit to which the public acts, records and proceedings are entitled in other States is the same faith and credit to which they are entitled in the State whose acts, records and judicial proceedings they are."

Cooley's Principles of Const. Law (2d Ed)., p. 203.

And such is the meaning of the clause as construed by the late Chief Justice Waite and his associate Justices when he presided over the deliberations of the Supreme Court.

"Without doubt the constitutional requirement of Article IV., § 1, that 'full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State,' implies that the public acts of every State *shall be given the same effect by the courts of another State that they have by law and usage at home.* * * * Whenever it becomes necessary, under this requirement of

the Constitution, for a court of one State, in order to give faith and credit to a public act of another State, to ascertain what effect it has in that State, *the law of that State must be proved as a fact.*"

Chicago & Alton R. R. *v.* Wiggins Ferry Co., 119 U. S., 615, 622, 623.

It has been suggested (*a*) that the term "Public Acts," as used in the constitutional provision, does not mean legislative acts or statutes, and it has also been suggested (*b*) that § 905 of the Revised Statutes of the United States not having provided the *effect* to be given in each State to the public acts of other States, no federal question arises out of a failure to give to such public acts full faith and credit—that is, to give them the same effect that would be given them in the State of their enactment. It has also been suggested (*c*) that as the statutes of a State have no extra-territorial effect, a failure of the courts of one State to apply a statute of another State to a contract under consideration in such courts and which was made and to be performed in the State enacting the statute in question, and under and in accordance with such statute, involves no federal question. In short, it has been denied that effect must be given by the courts of one State to the statute of another State entering into and forming an integral part of a contract made and performable in the State where the statute was enacted, and that the same effect must be given to the statute as a part of the contract that would be given to it in the State of its enactment.

To these several questions, in their order of statement, we now address ourselves.

THE TERM "PUBLIC ACTS"—ITS MEANING: *The term "public acts" in Article IV., § 1 of the Constitution of the United States refers to the legislative enactments or public statutes of the several States.*

At the time of the adoption of the Constitution of

the United States, the term "public acts" had a well settled meaning. It always referred to public statutes as distinguished from private statutes. "A general or public act is a universal rule that regards the whole community."

1 Blackstone's Commentaries, *p. 86.

On May 17, 1787, in the constitutional convention Mr. Randolph offered a form of a proposed Government in which the word "acts" was used.

"6th. Resolved, that each branch (of the legislative body) ought to possess the right of originating *acts*."

Eliot's Debates (2d Ed.), V. 5, pp. 126, 127 (Madison's Papers).

Again: "The 6th resolution (of May 17, see above) stating the cases in which the national Legislature ought to legislate was next taken into discussion. On the question whether each branch should originate *laws* there was a unanimous affirmative without debate."

Eliot's Debates, V. 5, p. 139 (Madison's Papers).

So Article VI. of Pinckney's proposed constitution in the last paragraph has

"All *acts* made by the Legislature of the United States, pursuant to this Constitution, and all treaties * * * shall be the supreme law of the land, and all Judges shall be bound to consider them as such in their decisions."

Eliot's Debates (2d Ed.), V. 5, p. 131 (Madison's Papers).

In June, 1787, during the debates in the constitutional convention Mr. Pinckney moved:

"That the national legislature should have authority to negative all *laws* which they should judge to be improper." He argued that such a uni-

versality of the power was indispensably necessary to render it effectual; that if the States were left *to act* of themselves in any case, it would be impossible to defend the national prerogative, however extensive they might be on paper; that the *Acts* of Congress had been defeated by this means.

Mr. Madison seconded the motion and said:

"He could not but regard an indefinite power to negative legislative *acts* of the States as absolutely necessary to a perfect system * * *. The States would, of themselves, pass no operative *act* any more than one branch of a legislature. * * *

"Mr. Gerry could not see the extent of such power and was against every power that was not necessary. He thought a remonstrance against unreasonable *acts* of the States would restrain them."

Eliot's Debates, V. 5, pp. 170, 171, 172.

Again: Mr. Patterson, among others, moved the following proposition:

"5. Resolved, that a Federal judiciary be established * * * to have authority to hear and determine, in all cases which may arise, any construction of any treaty or treaties, or which may arise on any of the *acts* for the regulation of trade * * *.

"6. Resolved, that all *acts* of the United States in Congress, made by virtue and in pursuance of the powers hereby * * * [conferred] shall be the supreme law of the respective States so far as those *acts* or treaties shall relate to said States * * *"

Eliot's Debates, V. 5, p. 192.

That the term "public acts" means legislative acts or public statutes is clearly shown by the form in which Art. IV., § 1 of the Constitution was first reported to the Constitutional Convention of 1787. The clause then read "full faith and credit shall be given in each State as to the *acts of the Legisla-*

ture," &c. This was subsequently shortened as a mere matter of style to the words "public acts," meaning, beyond doubt, acts of the Legislature, or statutes.

That the term "public acts," in Article IV., § 1 of the Constitution of the United States, has the meaning here contended for is, we think, clear upon both reason and authority.

Unity *v.* Burrage, 103 U. S., 447, 454.

"The words '*act* of the Congress' are as strong and unequivocal as *statute* of the Congress."

Story, *J.*, in United States *v.* Smith, 2 Mason, 143, 151.

"Acts are general or special, public or private. All legislative acts are laws, and if not laws then they are not acts of legislation."

People *v.* Tiphaine (N. Y.), 3 Parker's Cr. Rep., 244; s. c., 13 Howard's Prac. (N. Y.), 76, 77.

So much for the meaning of the term "public act." Let us now consider the next contention stated above.

CONGRESSIONAL ACTION WAS NOT REQUIRED OR NECESSARY TO MAKE OPERATIVE THE CONSTITUTIONAL PROVISION THAT "FULL FAITH AND CREDIT *shall* BE GIVEN IN EACH STATE TO THE PUBLIC ACTS * * * OF EVERY OTHER STATE."

Article IV., § 1, of the Constitution of the United States originated in the Committee of Detail in the Constitutional Convention, and in its original form was reported by that committee as follows: "Full faith shall be given in each State *to the acts of the Legislatures* and to the records and judicial proceedings of the courts and magistrates of every other State."

"The Growth of the Constitution," Meigs, p. 254.

2 Madison's Papers, 1240.

When the clause thus reported by the committee of detail came before the Federal Convention for action, Mr. Randolph moved the following proposition: "Whenever the act of any State, whether legislative, executive, or judiciary, shall be attested and exemplified under the seal thereof, such attestation and exemplification shall be deemed in other States as full proof of the existence of that act; and its operation shall be binding in every other State in all cases to which it may relate and which are within the cognizance and jurisdiction of the State wherein said act was done."

3 Madison's Papers, 1449.

At the same time Mr. Gouverneur Morris moved the following proposition on the same subject: "Full faith *ought* to be given in each State to the public acts, records and judicial proceedings of every other State, and the Legislature shall by general laws determine the proof and effect of such acts, records and proceedings."

These proposed forms of the clause in question, together with Article XVI. of the report of the committee of detail, were then referred to a committee consisting of Mr. Rutledge, Mr. Randolph, Mr. Gorham, Mr. Wilson and Mr. Johnson.

3 Madison's Papers, 1449.

This committee reported the clause back to the Federal Convention as Article XVI. in the following form: "Full faith and credit *ought* to be given in each State to the public acts, records and judicial proceedings of every other State; and the Legislature shall, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved and the effect which judgments obtained in one State shall have in another."

It is manifest that at this time the committee intended to provide expressly, *first*, how such public acts, records and judicial proceedings should be proven, and *second*, the effect which judgments ob-

tained in one State should have in another, and that they did not then contemplate making an absolute requirement upon the courts of one State to give to the public statutes of another State the same meaning and effect that such statutes would have in the State of their enactment. This is shown by the fact that in the draft of the clause as reported the word "*ought*" is used instead of the word "*shall*" in the clause as it was finally adopted.

3 Madison's Papers, 1479.

The clause came up for consideration again in the convention of September 3, 1787, and a debate then occurred as to whether the meaning and effect of the provision should be limited by certain suggested changes *so as to restrain its meaning and effect to judgments and judicial proceedings.*

3 Madison's Papers, 1480, 1481.

"Thereupon, on motion of Mr. Madison, the words '*ought to*' were struck out and '*shall*' inserted; and 'shall' between 'Legislature' and 'by general laws' struck out and 'may' inserted *nem con.*"

3 Madison's Papers, 1841.

Thereafter the "committee on style" reported the clause in question as it now stands in the Federal Constitution.

"The Growth of the Constitution,"
Meigs, 256.

Manifestly, the purpose of the framers of the Constitution was to require full faith and credit to be given to the public statutes of each State when pleaded and proven in the courts of a sister State in any case where rights had been established under such statutes, either by way of contract or otherwise, in the State passing the statute in question; and going a step further, the Constitutional Convention, after changing the term "ought" to the term "shall" so as to make the requirement of full faith and

credit peremptory so far as the public statutes of sister States are concerned, authorized Congress to determine, first, how such public acts, records and judicial proceedings shall be authenticated, and, second, what effect shall be given in the courts of one State to the judgments and judicial proceedings of another State.

Congress is without power to change the meaning or qualify the effect of the first paragraph of Article IV., § 1, of the Constitution, and, consequently, has never attempted to do so.

"The clause of the Constitution propounds three distinct objects: First, to declare that full faith and credit shall be given the records, &c., of every other State; secondly, to prescribe the manner of authenticating them; and, thirdly, to prescribe their effect when so authenticated. The first is declared and established by the Constitution itself and is to receive no aid, nor is it susceptible of any qualification by Congress. The other two are expressly subjected to the legislative power."

2 Story on the Constitution (5th Ed.), § 1308.

Section 905 of the Revised Statutes of the United States establishes the effect to be given to the judgments of sister States, and provides for the authentication and proof of those public acts to which Article IV., § 1, of the Constitution as adopted requires that full faith and credit *shall* be given.

It surely must have been the intent of Congress to give effect to the constitutional provision in question, as applied both to judgments and to public acts, by providing as to the effect of the judgments and as to the manner of authenticating and proving the acts. The acts of a sister State being thus authenticated and proven, it follows from the explicit language of the Constitution itself that full faith and credit must be given to such acts, and the term "full faith and credit" cannot reasonably be interpreted as having any other meaning than that in

the construction of a contract or a corporate charter of which a statute of the State of the contract or corporate *situs* is an integral part, such statute, when properly pleaded and proven, must be given the same force and effect by the Court considering the contract and the statute, that would have been given to such statute in the courts of the State where the contract was made and to be performed and the statute enacted.

"'Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State.' The language is positive and declaratory, leaving nothing to future legislation."

2 Story on the Constitution (5th Ed.), § 1309.

Whether in any case this doctrine should be extended, it is not necessary for us to discuss at this time or for this Court to determine now, but to deny the application of the Constitutional provision for the purpose here indicated, is to make it possible for the courts of any State to practically nullify corporate membership contracts entered into in another State and valid under the public acts of such State, even though such contracts be made and performable in the State enacting such statutes, and be themselves regulative of the status of the corporation and its members.

"I apprehend that it is now established by the law of this country that one who becomes a shareholder in a foreign company, and therefore and thereby a member of that company, such company existing in a foreign country and subject in all things to the law of that country, himself becomes subject to the law of that country, and to the articles or constitutions of that company construed and interpreted according to the law of that country in all things and as to all matters and all questions existing or arising in relation to or connected with the acts and affairs and the rights and liabilities of

such company and its members severally and collectively."

Kelly, *C. B.*, in Copin *v.* Adamson, L. R., Exch., 345, 349.

We do not deny that Congress *might* legislate as to the effect to be given to the statutes of one State when proven in another State, and by such legislation it is possible that for some purposes *extra-territorial* effect might be given to such statutes.

But Congress could not by any enactment constitutionally prevent State statutes from being given "full faith and credit" in other States. It might add to the constitutional provisions, but it cannot abridge the constitutional right. It might define the term "full faith and credit," but not having done so the common law meaning of the term prevails, and that meaning is that the same effect must be given to the statute of a sister State regulating the contract of membership of a corporate shareholder in a corporation of such sister State that the courts of the sister State have given to the statute.

Copin *v.* Adamson; Copin *v.* Strachan, 9 L. R. Exch., 345.

Canada So. R. Co. *v.* Gebhard, 109 U. S., 527.

Fish *v.* Smith, 73 Conn., 377.

Washington Central Bk. *v.* Hume, 128 U. S., 195, 207.

Coghlan *v.* S. Car. R'd. Co., 142 U. S., 101, 109.

Wayman *v.* Southard, 10 Wh., 1, 43.

It is not permissible for a State court to nullify a contract of corporate membership in another State by the avowal that comity does not require it to give effect to a statute of the sister State that forms a part of the very contract itself.

It is just here that the rule of "comity" has been

superseded and that "the rule of constitutional obligation" becomes operative.

Huntington *v.* Attrill, 146 U. S., 657, 666, 684, 685, 686.
Whitman *v.* Oxford Nat. Bk., 176 U.S., 559, 564, 565.
McCullough *v.* Virginia, 172 U. S., 102, 116, 117.
Allgeyer *v.* Louisiana, 165 U. S., 578.
Holden *v.* Hardy, 169 U. S., 366, 391.

It must be conceded by opposing counsel that even in the State of South Carolina the rule of "comity" has always been that the "full faith and credit" to be given to the statute of a foreign jurisdiction forming a part of a contract, and properly proven as such, is to apply such statute in accordance with its terms and its settled construction in the jurisdiction of its enactment.

Fitzsimmons *v.* Guanahani Co., 16 So. Car., 195.
Thornton *v.* Dean, 19 So. Car., 583, 589.
Pegram *v.* Williams, 4 Rich. (So. Car.), 219.
Belcher *v.* Commissioners, 2 McCord (So. Car.), 23.
McCandlish *v.* Cruger, 2 Bay (So. Car.), 377.
Touro *v.* Cassin, 1 Nott. & McC. (So. Car.), 173.

"The principle is that the *lex loci contractus* is to be observed in deciding on the nature, validity and construction of the contract."

Levy *v.* Boas, 2 Bailey (So. Car.), 219.
Ayres *v.* Audubon, 2 Hill (So. Car.), 601.

"It has been repeatedly held by this Court and the United States Supreme Court that every contract made embodies the law governing such con-

tract as much as if so stipulated in the contract in express terms."

Adler *v.* Cloud, 42 So. Car., 272, 291.

Therefore the statutes of New York as given in evidence in this case and their application by the Courts of New York as proven in this case, were a part of the contract between the Eastern Building & Loan Association and its stockholder, Williamson, and as such must be given "full faith and credit" by the Courts of South Carolina, not as a matter of comity and favor, but as a matter of constitutional right invoked and insisted upon.

Chicago, etc., R. Co. *v.* Wiggins Ferry Co., 119 U. S., 615.

Same Case, first appeal, 108 U. S., 18, 22.

And the right of the parties to contract under and subject to the laws of New York, neither the Legislature nor the Courts of South Carolina can abridge or deny.

R. S. U. S., § 1977.

Yick Wo. *v.* Hopkins, 118 U. S., 356, 369.

Santa Clara Co. *v.* Southern Pac. R. Co., 118 U. S., 394, 396.

On the other hand the Courts of South Carolina cannot refuse to enforce the contract according to the laws of New York without violating the Fourteenth Amendment by destroying the liberty of contract and denying to plaintiff in error the "equal protection of the laws."

Allgeyer *v.* Louisiana, 165 U. S., 578.

Holden *v.* Hardy, 169 U. S., 366, 391.

This brings us to the third contention already stated, namely, that we are seeking to give extra-territorial effect to the laws of New York and that

this the Courts of South Carolina are not required to do.

We concede that State statutes have no extra-territorial effect.

THE QUESTION IS NOT ONE OF THE EXTRA-TERRITORIAL EFFECT OF A STATE STATUTE IN ANOTHER STATE. IT IS WHETHER A COURT OF ONE STATE CONSTRUING A CONTRACT OF CORPORATE MEMBERSHIP MADE AND PERFORMABLE IN ANOTHER STATE CAN REFUSE TO GIVE TO A STATUTE OF THE STATE OF THE CONTRACT THE SAME MEANING AND EFFECT, AS A PART OF THE CONTRACT OF MEMBERSHIP, THAT WOULD BE GIVEN TO IT IN THE STATE OF THE CORPORATE *situs*.

We insist that in the case at bar the statutes of New York and the articles of Association and By-Laws of the Eastern Building and Loan Association enter into and form an inseparable part of the contract of corporate membership and that full faith and credit can only be given to the laws of New York by giving to them the same effect in connection with the contract of membership that has been given them by the courts of New York.

Glenn *v.* Garth, 147 U. S., 360.
Canada So. R. Co. *v* Gebhard, 109 U. S., 527, 537.
Chase *v.* Curtis, 113 U. S., 452, 458.
Whitman *v.* Oxford Nat Bk., 176 U. S., 559, 564, 565.
Carpenter *v.* Strange, 141 U. S., 87, 103.

"Whenever a court of one State is required to ascertain what effect a public act of another State has in that State, the law of such other State must be proved as a fact."

Lloyd *v.* Matthews, 155 U. S., 222, 227.

And when so proven, as in the case at bar, then not only the validity, but the construction and effect of the law must be determined by the State court in accordance with the Constitution and judicial decisions of the State by whose Legislature it was enacted.

Lloyd *v.* Matthews, 155 U. S., 222, 227.
Chicago, etc., R. Co. *v.* Wiggin's Ferry Co., 119 U. S., 615.

In no other way can full faith and credit be given to the "public acts" and "judicial proceedings" of "another State," as required by § 1 of Art. IV. of the Federal Constitution.

We submit that any decisions, or any *dicta*, in any opinion, of this Court not in harmony with these views cannot be sustained as against the foregoing line of reasoning based upon the history of the constitutional provision in question and the plain meaning of that provision *in the light of the prior common law.*

We have in the case at bar proven the "public acts" and "judicial proceedings" of the State of New York in strict conformity with § 905 of the Revised Statutes.

We have thereby complied with the rule laid down in the *Wiggins Ferry* cases and in *Lloyd* v. *Matthews*.

We have invoked the "full faith and credit" clause of the Federal Constitution in the State Courts and been told, in substance, that the laws of New York, even though they form a part of a contract made and performable in New York, will not be treated as a part of the contract by the courts of South Carolina. This is not a "construction" of these laws, but a denial of their validity as parts of the contract and a refusal to give them *any* effect, and, therefore, this Court has jurisdiction to review this case upon its merits.

May it not well be queried in this connection whether a State may, through judicial proceedings,

take possession of the assets of a solvent foreign corporation in its limits by suit and judgment against the corporation, and distribute such assets or their proceeds among the stockholders of the foreign corporation resident in such State, in such a manner as to give to such resident stockholders more than their paid in or *pro rata* share of the corporate capital stock, thereby discriminating against the corporate stockholders in other States having equal rights and interests in the corporation and its capital stock and assets?

Compare:

Blake *v.* McClung, 172 U. S., 239, 247.
Blake *v.* McClung, 176 U. S., 59, 63, 65, 68.

The Judiciary Act of 1789 provided that:

"The laws of the several states, except where the Constitution, treaties or statutes of the United States otherwise provide, shall be regarded as rules of decision in trials at common law, in courts of the United States, in cases where they apply."

R. S. U. S., § 721.

It will be noticed nothing is said as to the effect of such laws or the faith and credit to be given them. It is merely provided that they shall be "rules of decision," a far less definite term than the constitutional language which is that "full faith and credit *shall* be given in each State to the public acts * * * and judicial proceedings of every other State."

But this Court has uniformly held that as "rules of decision" State statutes establishing rules of property can be given full faith and credit only by giving them the same construction, interpretation and effect which they have in the State of their enactment.

Walker *v.* State Harbor Comrs., 17 Wall., 648, 651.
Randall *v.* Brigham, 7 Wall., 523.

Allen *v.* Massey, 17 Wall., 351.
Ohio *v.* Frank, 103 U. S., 697.
Green *v.* Neal's Lessee, 6 Pet., 291, 299.
Bucher *v.* Cheshire R. Co., 125 U. S., 582.
Hartford Ins. Co. *v.* Chicago, &c., R. Co., 175 U. S., 100.

Carrying the analogy a step farther, this Court has held in many cases that the construction of a State statute by the Courts of the State of its enactment forms a part of the statute and will be followed, no federal question being involved, even though this Court does not agree with such construction.

Forsyth *v.* Hammond, 166 U. S., 518.
Board *v.* Louisiana, 179 U. S., 622.
Jaffray *v.* McGehee, 107 U. S., 361, 365.
Brashear *v.* West, 7 Pet., 608.
May *v.* Tenney, 148 U. S., 60, 64.
Louisiana *v.* Pilsbury, 105 U. S., 278, 294.
South Branch Lumber Co. *v.* Ott, 142 U. S., 622, 628.

And this principle is so rigidly observed that where the same statute has been enacted in different States and the Courts of such States differ in their construction of it, this Court will follow the different constructions in cases coming from the different States, even though the statute thus becomes "a different law in one State from what it is in the other."

Union Bank of Chicago *v.* Kansas City Bk., 136 U. S., 223, 235.

And so this Court will change its construction in obedience to later decisions of a State court of last resort changing the construction of a statute of

such State, when no vested rights or contract obligations will be affected thereby.

Leffingwell *v.* Warren, 2 Bl., 599.
Wade *v.* Travis Co., 174 U. S., 499, 508.
Bauserman *v.* Blunt, 147 U. S , 647.
Moores *v.* Bank, 104 U. S., 625.

So the construction as to the powers of a corporation placed by the highest Court of a State upon a State statute chartering it is conclusive in this Court.

Smith *v.* Kernochen, 7 How., 198.

And in like manner the construction by the State courts of a clause regulating the liability of stockholders in a State statute authorizing the formation of corporations will be followed by this Court.

Flash *v.* Conn., 109 U. S., 371.

"It is also settled that the laws which subsist at the time and place of the making of a contract and where it is to be performed, *enter into and form a part of it*, as if they were expressly referred to or incorporated in its terms. This principle embraces alike those which affect its *validity*, CONSTRUCTION, DISCHARGE and enforcement."

Mr. Justice Swayne in Von Hoffman *v.* City of Quincy, 4 Wall., 535, 550.

These doctrines of this Court all rest upon the principle for which we contend, namely, that in order to give full faith and credit to a statute of one jurisdiction when it comes before the courts of another jurisdiction, it must be given the same effect that it has by law or judicial interpretation in the State of its enactment; and as the Constitution says full faith and credit *shall* be given in each State to the public acts and judicial proceedings of every other State, this can only be done in a case where a contract made and to be performed under the laws of a sister State is involved, by treating those laws

as a part of the contract and giving them the same force and validity as a part of such contract that they would have at the *situs* of the contract. Nothing short of this is "full faith and credit," and congressional action to determine what full faith and credit means would be a work of supererogation.

And in this connection we also urge upon the Court the proposition that the judgment of the Supreme Court of South Carolina denies to plaintiff in error the "equal protection of the laws" and deprives it of the "liberty of contract" guaranteed by the Constitution of the United States and the XIVth amendment thereto. What constitutes the "equal protection of the laws" and "liberty of contract" is not defined in the XIVth amendment itself, but must be determined by reference to the general law of the land.

U. S. *v.* Wong Kim Ark, 169 U. S., 696.

The amendment seems to crystalize into the Constitution certain fundamental principles of Magna Charta and our own Declaration of Independence.

Brannon: "The Fourteenth Amendment," 315–320.

Wally's Heirs *v.* Kennedy, 2 Yerg (Tenn.), 554.

Corporations are entitled to "the equal protection of the laws."

Smith *v.* Ames, 169 U. S., 466.

We have already shown the transactions through which the defendant in error became a stockholder in the plaintiff in error by application for stock to the corporation at its corporate *situs* in the State of New York.

Ante, p. 3.

We have likewise shown that the contract of membership was a contract entered into under the

laws of New York, in the State of New York, with a New York corporation, and that defendant in error expressly agreed to assume all the burdens and obligations of a stockholder, and observe and be bound by the corporate articles and by-laws and the laws of the State of New York regulating the Eastern Building and Loan Association and like corporations of New York.

Ante, pp. 3, 8, 9.

We have also shown that by the fourteenth condition of the stock certificates issued to the defendant in error it was provided that "any action brought against this association shall be commenced within six months after filing proofs and *in the County of Onondaga and State of New York.*"

Transcript, p. 26, Stock Certificate, condition "Fourteenth."

On this state of facts, and under these articles of incorporation and by-laws, defendant in error, for a period of seventy-eight months paid to plaintiff in error the sum of seventy-five cents per month on each of his shares of stock. This amounted in the aggregate to $58.50 paid in by him upon each share of stock, or total payments upon his twenty-five shares of but $1,462.50. There had been some profits earned by the Association at the expiration of the seventy-eight months' period, and it appears that the book value of the stock at that time (*i. e.*, the amount paid in upon it plus profits) was $1,6[illegible]0.47.

Transcript, p. 42; Evidence of Nathan C. Visscher.

At the expiration of the seventy-eight months' period, notwithstanding the fact that he was a borrowing member and his stock certificates were pledged to the Association in New York, and notwithstanding that he had contracted not to sue the Association upon the stock certificates except in

the County of Onondaga and State of New York, and notwithstanding the fact that his stock had not "matured," defendant in error demanded from the Association the payment to him of the full par value of his stock. The Association was compelled to refuse payment, because under the laws of New York and its Articles of Incorporation and By-Laws, it was forbidden to pay to its stockholders more than the amount paid in upon their stock with the *pro rata* net earnings thereof.

This suit was then instituted by the defendant in error against the plaintiff in error to recover upon the stock certificates, and upon the trial, as we have already seen, the plaintiff in error, as defendant below, gave in evidence and duly proved the Articles of Incorporation and By-Laws of the corporation, the application for stock and stock certificates of defendant in error, the "public acts" of New York under which plaintiff in error was incorporated and which enter into and form a part of its contracts with its members, and the "judicial proceedings" of the courts of New York determining the meaning and effect of these "public acts" and adjudging the *status* of members in corporations organized under said laws in cases like the one at bar.

Ante, pp. 2–9.

On this state of the record, we insist that the decision and judgment of the Supreme Court of South Carolina denied to plaintiff in error "the equal protection of the laws" within the true meaning and intent of the XIVth Amendment.

Allgeyer *v.* Louisiana, 165 U. S., 578.
Holden *v.* Hardy, 169 U. S., 336, 391.

The refusal of the Supreme Court of South Carolina to enforce the corporate articles and to recognize the validity of the statutes of New York forming an integral part of the contract of membership between the defendant in error and plaintiff in error,

was in and of itself a denial of "the equal protection of the laws" to plaintiff in error, and a discrimination in favor of defendant in error because of his citizenship in South Carolina that violates the principles of the Fourteenth Amendment.

Brannon, "The Fourteenth Amendment," 97, 98.
Barbier *v.* Connolly, 113 U. S., 27.
Blake *v.* McClung, 172 U. S., 239, 247.
Blake *v.* McClung, 176 U. S., 59, 63, 65, 68.
Sully *v.* Am. Nat. Bk., 178 U. S., 289, 303.
Belfast Sav. Bk. *v.* Stowe, 92 Fed. Rep., 102, 103, 104.

Williamson, by reason of his contract of membership, acquired vested contract rights which cannot be impaired, and may be enforced by him under the laws of New York.

Bedford *v.* Eastern B. & L. Assn., 181 U. S., 227, 240.

Therefore, the Association had corresponding rights as against him, and the State of South Carolina cannot, by a judicial decision, discriminate in his favor, and at the same time deny validity to the laws of New York forming a part of the contract itself. This violates alike the "full faith and credit" clause of the Federal Constitution and the "equal protection of the laws" clause of the Fourteenth Amendment.

Sully *v.* Am. Nat. Bk., 178 U. S., 289, 303.

The several decisions we have already cited from the South Carolina reports show that the established rule in that State has been that contracts are to be enforced in South Carolina in accordance with the statutes and decisions of the jurisdiction where the contract was made and is to be performed.

Ante, p. 61.

Yet, in the case at bar, as in the Welling and Bonnoitt and Ebaugh cases, the Supreme Court of South Carolina refuse to apply this established rule upon the express ground that it might result in injury to one of the citizens of South Carolina as between himself and a corporation of New York. This is equivalent to an express denial of the "equal protection of the laws" as between the stockholders of plaintiff in error resident in South Carolina and those resident in New York and other States, and as the corporation in this case represents all its stockholders, it seems clear that there has not only been a denial of the "equal protection of the laws" but likewise an absence "of due process of law."

"Carhart as a non-resident unsecured creditor * * * has the right to share in the distribution of the assets of the Carnegie Land Company upon the same level as like creditors of the company who are residents of the State of Tennessee, and as the decree below denies him that right, it must be reversed as to him for that reason."

Sully *v.* Am. National Bank, 178 U. S., 289, 303.

Certainly this principle fits the case at bar, because the effect of the judgment of the Supreme Court of South Carolina is to take the corporate funds belonging in equal ratio to all stockholders of the plaintiff in error and by "robbing Peter," who happens to live in New York or Virginia, "to pay Paul" merely because the latter lives in South Carolina. Surely such a doctrine as this cannot be countenanced by this Court.

In the *Ebaugh* case (185 U. S., 114) this Court refused to revise the judgment of the Supreme Court of South Carolina upon the ground that the facts found by a referee in the lower Court in relation to the laws of New York were binding upon this Court (185 U. S., 114). In the case at bar no such diffi-

culty exists, because, as we have already shown, the legal questions involved were raised as propositions of law in the trial Court by requests for instructions, which requests were denied by the Court as a matter of law. These requests for instructions presented squarely the question of the application of the "full faith and credit" clause of the Federal Constitution to the facts of this case. Therefore, the action of the trial Judge in expressly declining to charge that full faith and credit must be given to the laws of New York, and that this meant that the same effect must be given to those laws as would be given to them in the State of New York, is error of law, for which we think the judgment in this case must be reversed. In any event, it certainly requires this Court to finally determine whether the Public Acts of the State of New York, forming a part of the contract between the plaintiff in error and the defendant in error, are to be given the same force, meaning and effect in the courts of South Carolina that they have in the Courts of New York.

In a recent case, this Court said: "To state the result which must necessarily follow from a contrary deduction is sufficient of itself to demonstrate the unsoundness of the reasoning by which the non-Federal nature of the question can alone be upheld. For it is clear that if it be true that the bond given in a Federal court of equity on the granting of an injunction is not to be construed with reference to the rules of law applicable to such bonds in such court, then there can be no certain general rule by which to determine the liability of the obligors upon the bond. Their responsibility would be one thing in a court of the United States and a different thing in the courts of the various States, which would imply that the parties did not contract with reference to any definite rule of liability,"

Tullock *v.* Mulvane, 184 U. S., 497, 505.

This principle is directly applicable here, because if this Court fails to require "full faith and credit" to be given to the public acts of New York forming a part of the contract of corporate membership between the defendant in error and the plaintiff in error, it makes it possible for the contract to have one meaning and effect in the State of the corporate *situs* and a wholly different meaning and effect in other States, and this doctrine, once established, will wholly subvert the settled rule of law that the members of a corporation, no matter what the State of their residence, are bound by the laws of the State of the corporate *situs*, both as to their rights as stockholders and the rights of the corporation against them.

Bedford *v.* Eastern B. & L. Assn., 181 U. S., 227.

Canada Southern Ry. *v.* Gebhard, 109 U. S., 527, 537.

Relfe *v.* Rundle, 103 U. S., 222, 225, 226.

Chase *v.* Curtis, 113 U. S., 452, 458.

3 Thompson on Corp., § 3046.

Daley *v.* People's B., L., etc., Assn., 172 Mass., 533; s. c., 52 N. E. Rep., 1090; Opinion by Holmes, *C. J.*

Nor can it be denied that the place of performance of a contract of stock subscription is at the corporate *situs*.

Penobscot, &c., R. Co. *v.* Bartlett, 12 Gray (Mass.), 244.

1 Thompson on Corp., § 1259.

3 Thompson on Corp., § 3046.

And it is likewise settled law that contracts must be construed by the law of the place of performance.

Coghlan *v.* South Carolina R. R. Co., 142 U. S., 101, 109, 110.

Pritchard *v.* Norton, 106 U. S., 124, 136.
Liverpool, &c., Co. *v.* Phœnix Ins. Co., 129 U. S., 397, 458.
Washington Central Bank *v.* Hume, 128 U. S., 195, 206, 207.

In the case at bar, the Supreme Court of the State of South Carolina has decided that the Statutes of New York and the certificate of incorporation and by-laws of the plaintiff in error are not a contract binding upon the defendant in error. This Court is not bound by a State court decision holding that not a contract which is shown to be such in accordance with the forms of law, and for the protection of the obligation of which the Federal Constitution has been invoked.

Jefferson Branch Bank *v.* Skelly, 1 Bl., 436, 443.
McCullough *v.* Virginia, 172 U. S., 102, 109.

In such cases, assuming that the constitutional provision has been properly invoked, this Court will determine the meaning and effect of the contract in accordance with the contract *situs*.

Sioux City R. Co. *v.* North American Tr. Co., 173 U. S., 99, 100.

This Court held in the *Bedford* case that while conditions upon which foreign corporations may do business in any State are a matter of State regulation, yet under this power a State cannot discharge citizens of such State from their contract obligations made and performable in another State. Can a State, by a Supreme Court decision, do what it would not be permitted to accomplish by legislative action?

Bedford *v.* Eastern B. & L. Assn., 181 U. S., 228.

The decision of the Supreme Court of South Carolina, in the case at bar, denies to plaintiff in error, all remedies upon its contract with the defendant in error as a stockholder, and refuses to hold him to his obligations as such. It releases him from his obligation, as a borrowing member not to withdraw his stock, and establishes a new contract between the parties in direct violation of the express provisions of the statute law of New York. No State can so deny the enforcement within its jurisdiction of valid contracts under the law of a sister State.

Edwards *v.* Kearzey, 96 U. S., 595, 600, 601.
The Homestead Cases, 22 Gratt., (Va.), 266; s. c. 12. Am. Rep., 507, 514, 515.
White *v.* Hard, 13 Wall., 646, 654.
Cæsar *v.* Cappell, 83 Fed. Rep., 403.
Eastern B. & L. Assn. *v.* Bedford, 88 Fed. Rep., 7.
Allgeyer *v.* Louisiana, 165 U. S., 578.

"Upon the State courts, equally with the courts of the Union, rests the obligation to guard, enforce and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof whenever those rights are involved in any suit or proceeding before them," and "if they fail therein and withhold or deny rights, privileges or immunities secured by the Constitution of the United States, the party aggrieved may bring the case from the highest court of the State in which the question can be decided to this Court for final and conclusive determination."

In re Wood, 140 U. S., 278, 286.
Robb *v.* Connolly, 11 U. S., 624, 627.
Neal *v.* Delaware, 103 U. S., 370, 386, 387.

It is for this Court to say, and it is its duty under the Constitution to determine, whether in the de-

cision in the case at bar the Supreme Court of South Carolina gave to the laws of New York, and the contract made under those laws, the same effect that such laws and contract have in the courts of New York.

Green *v.* Van Buskirk, 5 Wall., 307, 311, 314.
Christmas *v.* Russell, 5 Wall., 290, 302.
Mills *v.* Duryee, 7 Cr., 481, 483, 484.
Carpenter *v.* Strange, 141 U. S., 87, 103.
Dupasseur *v.* Rochereau, 21 Wall., 130, 139.
Huntington *v.* Attrill, 146 U. S. 657, 666.
Chicago, &c., R. Co. *v.* Wiggins Ferry Co., 119 U. S., 615, 622, 624.
Chicago, &c., R. Co. *v.* Stevens, 174 U. S., 710.

"It was insisted on the one side, and denied on the other, that the faith and credit which the judicial proceedings in the courts of the State of Illinois had by law and usage in that State, were denied to them by the Supreme Court of New York in the decision which was rendered.

"Whether this was so or not could only be properly considered when the case came to be heard on its merits; but this Court, in denial of the motion to dismiss, held that the Supreme Court of New York necessarily decided *what* effect the attachment proceedings in Illinois had by the law and usage in that State; and as it decided against the effect which Green claimed for them, this Court had jurisdiction under the clause of the Constitution which declares 'that full faith and credit shall be given in each State to the public acts, records and judicial proceedings in every other State,' and the Act of Congress of 1790, which gives to those proceedings the same faith and credit in other States that they have in the State in which they were rendered."

Green *v.* VanBuskirk, 7 Wall., 139, 145.

In the light of the principles stated and the authorities cited in the foregoing brief and argument, we ask that the judgment of the Supreme Court of South Carolina in this case be reversed; and that this Court finally establish the Constitutional rule, that full faith and credit must be given by the courts of one State to the statutes of another State and to the judicial decisions of that State determining the effect of such statutes as integral parts of the charter of a corporation organized under the laws of that State. Not to hold this is to destroy the "liberty of contract" as between citizens of different States and to permit a State in its courts to refuse to enforce a contract against one of its citizens valid under the laws of the State where it was made and is to be performed. It seems to us that the Federal Constitutional provision was intended to prevent such injustice as this and with the hope that this Court will declare what was once a rule of comity to be now a rule of constitutional obligation we most respectfully submit this case.

WM. HEPBURN RUSSELL,
WM. BEVERLY WINSLOW,
Counsel for Plaintiff in Error.

D. A. PIERCE,
Of Counsel.

18338

Supreme Court of the United States,

OCTOBER TERM, 1902.

TERM No. 152.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y.,
Plaintiff in Error,

vs.

BRIGHT WILLIAMSON,
Defendant in Error.

In Error to the Supreme Court of the State of South Carolina.

SUPPLEMENTAL AND REPLY BRIEF FOR PLAINTIFF IN ERROR.

I.

The defendant in error cites and relies upon the recently decided case of Vought *vs.* Eastern Building and Loan Association, now reported in Advance Sheets of 172 New York Court of Appeals Reports, at page 508 *et seq.* For the convenience of the Court and in accordance with the suggestion of The Chief Justice, we annex to this supplemental brief, as "Appendix A," a full copy of the opinion of the Court of Appeals of New York in the Vought case.

We do not regard the Vought case as controlling in the case at bar for the following reasons:

FIRST.—The case at bar involves the obligations and contractual relations of the defendant in error as an advanced or borrowing member of the Eastern Building and Loan Association, while in the Vought case the statutory obligations of a borrowing member under the laws of New York were not considered or passed upon in any way.

SECOND.—In the case at bar, the ambiguous language of the original Articles of Incorporation of the Eastern Building and Loan Association, which was the direct subject of construction and adjudication in the Vought case, is avoided by the fact that on May 14, 1894, the plaintiff in error, at an annual meeting of its stockholders and by their unanimous action, amended its articles of incorporation and expressly provided that "instalment stock shall mature and be payable when the dues paid thereon, with the profits apportioned and credited thereto, shall equal $100 per share."

Transcript, p. 58;
Amended Articles of Incorp., Art. VIII., § 3.

The amended Articles of Incorporation of 1894 also provide that "whenever the dues or monthly instalments on any shares upon which advances or loans have been made shall, with the earnings credited thereto, amount to the face value of said shares, the same shall be redeemed and shall be cancelled together with all the securities given therewith, except where advances have been made on shares on the security thereof alone and the same has matured as aforesaid, the maturity or face value thereof shall be paid, less the amount of the advance made thereon, unless the advance or loan shall have been previously paid."

Transcript, p. 61;
Amended Articles of Incorp. of 1894, Art. XI., § 2.

The amended Articles of Incorporation also provide that "except as otherwise provided, profits and losses shall be apportioned upon all shares in force in like proportion to the amount paid in thereon for the average time of investment."

Transcript, p. 63;
Amended Articles of Incorp. of 1894, Art. XIV., § 4.

It was not until about a year after the adoption of these amended Articles of Incorporation that the defendant in error made application for an advance upon his shares and became an advanced or borrowing member.

Transcript, pp. 46, 47, Exhibits "I," "J," and "K."

Necessarily this advance had to be made under the terms and provisions of the amended Articles of Incorporation of 1894.

As shown in our first brief, these amended Articles of Incorporation were unanimously adopted, and it would also seem that the defendant in error was represented by proxy at the stockholders' meeting which adopted the amended Articles, he having regularly appointed "the Secretary of said Association for me and in my name, place and stead to appear and vote as my proxy upon any and all shares of stock at any time held by me or standing in my name in said Association during my absence at any and all meetings of stockholders or directors, and upon any and all matters which may properly come before any such meeting."

Transcript, p. 24, Exhibit "A."

THIRD.—The Vought case is not before this Court upon this writ of error in such form that it can be taken into account and considered as a part of the record upon which this case must be heard and determined.

The opinion in the Vought case does not involve

the construction, meaning and effect of the explicit provisions of the statutes of New York which were invoked and relied upon by the plaintiff in error in this case in the courts of South Carolina. This Court, so far as the questions involved in this case are concerned, must look to the record in order to determine whether full faith and credit were given to the laws of New York, as proven in the Courts of South Carolina, and whether the equal protection of the laws was accorded in those courts to the plaintiff in error.

Chapter 122 of the laws of New York of 1851, and Chapter 564 of the Laws of New York of 1875, were proven as facts in this case in the South Carolina courts.

Transcript, pp. 64–68, 68–71.

The cases of O'Malley *vs.* People's Building, Loan & Savings Association (92 Hun, N. Y., 572), People *vs.* Lowe (117 N. Y., 175) and Concordia Savings & Aid Association *vs.* Reed (93 N. Y., 474), as well as the Englehardt case (148 N. Y., 281) were also given in evidence and proven as facts in the Courts of South Carolina.

Transcript, pp. 71–84.

The laws of New York were also proven as facts by the testimony of an expert and competent witness, who, in addition to testifying as to the laws of New York, also testified that "the net earnings of the Association have, at stated periods, been apportioned and credited to all shares in good standing in the same ratio."

Transcript, pp. 44, 45, Depo. of D. A. Pierce.

We submit that this Court in this case must determine the same upon the record and not by mere reference to an opinion of the Court of Appeals of New York in a case not turning upon the same state of facts, not involving the construction of the same

statutory provisions, and which was decided upon demurrer to the evidence only, and not upon proof of the exact status of the member's interests and rights in the corporation as in the case at bar.

The Vought case, as an inspection of the opinion will show, was decided upon a demurrer to the evidence. The lower Court in New York had held that the plaintiff in that case did not make out a *prima facie* case by offering in evidence his stock certificate in the association containing the agreement to pay its par value at the expiration of seventy-eight months, and the Court of Appeals, perhaps not improperly, reversed the decision of the lower Court and held that upon its face the contract was a binding obligation, and that the suit should not have been dismissed by the Court below upon the theory that a *prima facie* case had not been made out. The Vought case was not finally disposed of by the decision of the Court of Appeals, but was *reversed for a new trial.*

If it is proper for this Court to look at the opinion in the Vought case as bearing upon the determination of the case at bar, then we assume that it is proper for us to say that that case is now upon the calendar of the trial Court at Syracuse for trial upon its merits, and that it is the purpose of the defendant Association to retry the case, introduce the amended Articles of Incorporation of 1894, and make proof that the aliquot share of the plaintiff Vought in the assets of the defendant Association is not equal to the par value of the plaintiff's shares of stock. What the determination of the courts of New York will be if the same facts as to this appear in the Vought case, upon a retrial thereof, as those which appear in the record in the case at bar can only be a matter of conjecture. It is fair to assume, however, that as the Court of Appeals of New York did not in the Vought case overrule or qualify the previous decisions of the New York Court of Appeals in the cases of People vs. Lowe (117 N. Y., 175), Englehardt vs. Fifth Ward, &c., Association (148 N. Y.,

281) and Reed vs. Concordia Association (93 N. Y., 474), that it will, when the Vought case again comes before it for consideration, apply the principles laid down in those cases and hold, as those cases do, that the Eastern Building and Loan Association, being a purely mutual corporation, none of its members can, as between themselves, be accorded preferences in the withdrawal of their contributions to the capital stock of the corporation.

It was suggested upon the oral argument that this Court might look at the opinion of the Court of Appeals in the Vought case, but could not look at the record in that case to determine the application of the legal doctrines laid down in the opinion.

We have always understood it to be settled law that an opinion was no broader in its effect than the facts before the Court calling forth the opinion, and that everything beyond a decision of the questions raised upon the facts in the record must be regarded as by way of *dicta* only. Looking at the Vought case in the light of this rule of law, it appears upon the face of the report that it was an "appeal from a judgment of the Appellate Division of the Supreme Court * * * affirming a judgment in favor of the defendant (the Association), entered upon a dismissal of the complaint by the Court at a Trial Term."

Advance Sheets, 172 N. Y., 709.

Mr. Justice Peckham, who is familiar with the New York practice, will agree with us that this shows that the opinion was rendered upon the ground that the Court below had erred in holding that the plaintiff had not made out a *prima facie* case upon the allegations of her complaint and the terms of the stock certificate promising payment of the par value of the stock at the expiration of seventy-eight months from the date of the certificate.

However far the opinion of the Court may travel

beyond the proposition that the reversal ef the case was called for because the plaintiff had made out a *prima facie* case, yet everything in the opinion beyond this holding *is by way of dictum only*, and will not, even in the same case upon a second appeal, be regarded as precluding the defendant Association from showing the modifications of the contract embodied in the stock certificate as made either by the amended Articles of Incorporation of 1894, the specific provisions of the statute of New York entering into the contractual relations between the corporation and its members, and the actual facts as to the financial condition of the Association and the interest of the plaintiff therein.

In the case at bar, the exact status of the stock of the defendant in error upon the books of the Association is shown by evidence that is unqualified and uncontradicted.

Transcript, pp. 37–43, Evidence of Nathan C. Visscher.

For these reasons, we think that the opinion of the Court of Appeals of New York in the Vought case is not a controlling authority in the case at bar.

II.

The amended Articles of Incorporation of the Eastern Building and Loan Association adopted on May 14, 1894, and under which the defendant in error became a borrowing or advanced member in April, 1895, are binding upon the defendant in error in this case and limit and qualify the terms and conditions of the stock certificate upon which alone he bases his right to recover.

Tr., pp. 53–54; 58, 59, 60, 61, 63.

The right to amend the Articles of Incorporation was expressly reserved in the original Articles, which provided: "These Articles of Incorporation may be amended at any annual or special meeting of the Association, provided the same is previously endorsed by resolution of the Board of Directors and adopted by a majority vote of stock of the Association."

Transcript, p. 53; Art. XIX. of original Articles.

The alteration made was one clearly in the interest of the Association and its members as a whole and for the protection of the Association against just such claims as the defendant in error makes in this case. An exactly similar question has been determined in a leading English case, in which it is said:

"The question is whether the plaintiff is bound by the altered rule. He gave notice to withdraw under the rules in force when he became a member. The rule was altered to his detriment. The alteration confers a discretionary power upon the directors to make prior payment to any member having not more than fifty pounds standing to his credit on the books of the society. The effect of the alteration is to postpone payment to the plaintiff. It was part of the contract between the plaintiff and the society that the rules might be altered, and the contract was altered according to the rules by which the concurrence of three-fourths of the members then and there present at the meeting when the alteration was proposed was required. * * * It may seem strange that a society should take such a power of altering its rules, but it is questionable whether it is not on the whole greatly to the benefit of all that there should be such a power."

Pepe *v.* City & Suburban Bldg. Soc. (1893), 2 Ch., 311; s. c., 3 "The Reports," 472, 473.

Davies *v.* 2d Chatham Bldg. Soc., 61 L. T., 680.
Supreme Lodge K. of P. *v.* Knight, 117 Ind., 489; s. c., 20 N. E. Rep., 479.
Pain *v.* Societe St. Jean Baptiste (1899), 172 Mass., 319.
Supreme Commandery *v.* Ainsworth, 71 Ala., 445.

"Where the only contract between the society and the member is the original contract under which he became a member," said the Court in a recent English case, "and that, as is the case here, provides for alterations of the rules, he is bound by any subsequent alteration that may be made within the power of alteration, whatever the extent of that alteration may be."

Smith *v.* Galloway (1898), 1 Q. B., 71.
Pain *v.* Societe, etc., 172 Mass., 319.

III.

This action was begun and tried in the courts of South Carolina as an action upon the contract embodied in the stock certificate. There was no attempt to repudiate the contract and sue upon the ground of fraud, for money had and received. Therefore, the representations alleged to have been made to the defendant in error at the time he subscribed for the stock cannot be looked to to establish the liability of the Association as one arising from fraudulent misrepresentations.

8 Ency. of Pl. & Pr., 894.

IV.

By the decision of the Supreme Court of South Carolina the statutes of New York, forming an integral part of the contract of membership between the defendant in error and the plaintiff in error were denied validity because they were given no effect whatever, hence full faith and credit was not given to these laws and the plaintiff in error was denied the equal protection of the laws.

The trial Court refused either to submit the laws of New York to the jury to be construed and applied by the jury, or to tell the jury the meaning and effect of the laws and advise them that such laws must be given the same effect, as constituent parts of the contract, that would be given them in New York.

Transcript, pp. 84, 85;
Deft.'s Requests to Charge, I., II., III., IV., V., VI., VII., VIII. and IX.

All of these refused requests were made the basis of exceptions upon appeal.

Transcript, pp. 91–99.

It follows that by affirming the action of the trial Court in refusing these requests, the Supreme Court of South Carolina invalidated the laws of New York as parts of the contract of corporate membership and refused "full faith and credit" to such laws.

V.

Counsel for defendant in error upon the argument and in his brief contends that the questions raised in this case are *res judicata* because upon an

appeal from an interlocutory attachment order, before the issues were made up or the case tried upon its merits, the Supreme Court of South Carolina, by way of *dicta*, gave expression to its views as to the nature and construction of the contract between the parties and the effect of the laws of New York. This contention cannot be sustained so far as this writ of error is concerned, because admittedly no final judgment was entered at the time of said interlocutory decision.

Counsel for defendant in error in his brief says: "It is very true that the first decree was entered on an interlocutory motion to dissolve an attachment."

Brief for Defendant in Error, p. 8.

From such an interlocutory decree, when the case was not even at issue, no writ of error could have been prosecuted to this Court and it was only after final judgment in the case by the Supreme Court of South Carolina that it could be brought here.

Rev. Stat. U. S., § 709.
Drake *v.* Kochersperger, 170 U. S., 303.

It was only by the answer of the plaintiff in error as defendant below and its requests for instructions upon the trial of the case on its merits that the federal questions were or could be raised and a final judgment follow, and not until the federal questions had been raised and a final judgment been entered could a writ of error issue to bring the case to this Court.

Gr. West. Tel. Co. *v.* Burnham, 162 U. S., 329, 341.

The record in this case will be searched in vain for any evidence of any adjudication between the parties upon the merits of this case, except the final judgment of the Supreme Court of South Carolina, from which the writ of error here is prosecuted.

The only reference in the transcript to the pro-

ceedings upon the interlocutory order of attachment is that in the opinion of the Supreme Court of South Carolina in the case at bar that Court undertakes to avoid directly passing upon some of the material questions involved by saying that the questions had been disposed of upon the former appeal.

The opinion of the Supreme Court of South Carolina in the attachment proceeding, while it discusses at length the rights of the parties, could not be conclusive even as between the parties in the same suit, because no issues had been made up and the appeal was taken by the defendant in error Williamson from an order dissolving an attachment which he had caused to be issued and levied upon certain property of the association.

See Williamson *v.* Eastern B. & L. Assn., 54 S. C., 582.

It is true that *arguendo* counsel for the association contended upon that appeal that the attachment was in violation of Article XIV., Section 1, of the Constitution of the United States, prohibiting a State from denying to any person the equal protection of the laws, but in the opinion in the attachment proceeding the Supreme Court of South Carolina refused to consider this question, saying: "The case of Blake *v.* McClung, 172 U. S., 239, shows that this would be a very interesting question if it had been passed upon by the Circuit Judge, but as he has made no ruling upon it, the question will not be considered by the Court" (54 S. C., 599).

The judgment of the South Carolina Supreme Court in the attachment proceeding was that the attachment order of the Circuit Judge be reversed (54 S. C. 599).

Manifestly, there was in that proceeding no final adjudication of the rights of the parties, no final judgment from which a writ of error could be prosecuted to this Court. But afterward, when the issues were made up and the case actually tried in the Cir-

cuit Court, as shown by the transcript of record here, the federal questions were expressly raised and rulings thereon requested by way of instructions to the jury, and such instructions being refused, it necessarily follows that the Courts of South Carolina in this case have refused to give full faith and credit to the laws of New York by declining either to submit those laws to the jury to be found as facts, or to instruct the jury as a matter of law that the laws of New York constituted a part of the contract of corporate membership and must be taken into account both as matter of fact and matter of law in determining the rights of the parties.

It seems to us too clear for argument that no question of *res judicata* is involved in the consideration of the case at bar by this Court.

VI.

Upon the record and under the authorities set forth in our original brief and in this supplemental brief we respectfully submit that the judgment of the Supreme Court of South Carolina in this case should be reversed.

Wm. Hepburn Russell,
Wm. Beverly Winslow,
Counsel for Plaintiff in Error.

D. A. Pierce,
Of Counsel.

APPENDIX A.

VOUGHT *v.* EASTERN BUILDING AND LOAN ASSOCIATION.

Appeal from a judgment of the Appellate Division of the Supreme Court in the Fourth Judicial Department, entered May 9, 1901, affirming a judgment in favor of defendant entered upon a dismissal of the complaint by the Court at a Trial Term.

The nature of the action and the facts, so far as material, are stated in the opinion.

MARTIN, *J.:* This action was to recover one thousand dollars, the par or maturity value of ten shares of stock issued by the defendant, five shares to the plaintiff and five shares that were assigned to her which were originally issued to one H. E. Newton. The contract or certificates of shares made and issued by the defendant to the plaintiff and her assignor constituted them shareholders, and provided that in consideration of the membership fee of one dollar upon each share, together with the agreements and statements contained in the application for membership in the association, and full compliance with the terms, conditions and by laws printed on the front and back of each certificate, the defendant would pay to such shareholder, or his or her executors, administrators, or assigns, the sum of one hundred dollars for each of said shares at the end of seventy-eight months from the date thereof.

Indorsed upon each of these certificates was the name of the shareholder, his residence, and a statement that the monthly installments were three dollars and seventy-five cents. Indorsed upon the certificate issued to the plaintiff was, "Date of issue Dec. 1st, 1891. Maturity, June 1st, 1898," while upon the certificate originally issued to Newton and transferred to the plaintiff was endorsed, "Date of

issue Oct. 1, 1890. Maturity, April 1, 1897." The terms and conditions referred to provided, in considerable detail, for the withdrawal of shares by a shareholder before the period of maturity, the time and method of such withdrawal, and the terms upon which it might be made.

As the defendant is a going association, and the questions here presented do not arise upon its insolvency or dissolution, it is perhaps doubtful if the articles of association are to be regarded as a part of the contract between the parties. Yet, in the consideration of this case, we shall treat them as material in determining the character and effect of the agreement and the rights of the parties under it. The certificates issued provide that the terms, conditions and by-laws printed on the front and back thereof are made a part of the contract, and, hence, taken together, they constitute the agreement between the parties and the standard by which their rights and liabilities are to be determined. (*People ex rel. Atty.-Gen.* v. *Life & R. Assn.*, 150 N. Y. 94, 108; *Matter of Equitable R. F. L. Assn.*, 131 N. Y. 354, 369.)

At the threshold of this investigation we find an absolute and unqualified promise upon the part of the defendant to pay to each of the holders of the stock owned by the plaintiff the sum of one hundred dollars for each share at the end of seventy-eight months from the date of the certificate, and also an indorsement thereon of the actual time when the shares were to mature. Therefore, as that time had expired and the required payments had been made, it is manifest that the plaintiff was entitled to recover, unless there is some other part of the contract which modifies or changes that provision.

It is contended by the respondent that such a change is wrought by the other provisions contained in the terms, conditions, by-laws and articles of association, and that this agreement to pay at the expiration of seventy-eight months must, in the light of such provisions, be read and construed as an

estimated, and not an actual, time of payment. Its contention is that the provisions of paragraph one of the terms and conditions printed upon the certificate, which provide that the shareholder shall pay seventy-five cents a month on each share until the share *matures or is withdrawn;* section 14 of article 14 of the by-laws, stating that all shareholders shall pay a monthly installment of seventy-five cents on each share, until the same shall be *fully paid;* the fifteenth paragraph of the articles of association, which declares that the amount to be paid to the owners of shares at maturity shall be one hundred dollars per share; the sixth paragraph of the terms and conditions, which provides that at stated periods the profits arising from interest, premiums, fines and other sources shall be apportioned among the shares in good standing, and article eleven of the by-laws, which declares that no money can be drawn from the loan fund for any other purpose than the making of loans on security and to pay amounts due withdrawing shareholders, when given their obvious meaning, effect an utter alteration of the provision by which the defendant agreed to pay the plaintiff one hundred dollars upon each share at the expiration of the term actually designated. If such change or modification is wrought it can only be upon the ground that the provisions of the contract relied upon by the defendant are inconsistent with its promise to pay at the time named, and clearly show that the intention of the parties was that such payment should be made only in the event that upon the shares owned by the plaintiff there had been paid a sum which, together with the profits apportioned to them, would amount to the face of the shares. In other words, the defendant's contention is that those provisions were sufficient to change an absolute promise to pay into a conditional one dependent upon the success of its enterprise. We find nothing in these provisions which would justify any such conclusion. The provision in paragraph one that the plaintiff should pay until the share is

paid or withdrawn, is entirely consistent with the agreement for absolute payment for the shares by the defendant at the time named, as by its contract it agreed that the plaintiff's shares should mature at that time. The provision of section 14, article 14, of the by-laws obviously refers to the agreement in the certificate by which such payments were to be continued for seventy-eight months, and when payments had been made for that period clearly the shares became fully paid. The same may be said as to the fifteenth paragraph of the articles of association, which declares that the amount to be paid to the owners of the shares at maturity shall be one hundred dollars per share. Where shares are to be paid for by paying the sum of seventy-five cents monthly upon each for the period of seventy-eight months, and such payments have been made, it is extremely difficult to discover any theory upon which it can be properly held that such shares have not been fully paid and matured. Nor do we see how the provision for apportioning profits among the shares in any way relieved the defendant from or modified its promise to pay at the time named.

But it is further contended by the respondent that inasmuch as it is provided by article eleven of the by-laws that no money can be drawn from the loan fund for any other purpose except making loans on security and to pay amounts due withdrawing shareholders, the defendant had no authority to pay this claim because the loan fund was the only one from which such payments could be made. If that be true, and the plaintiff is not to be regarded as a withdrawing shareholder, we are unable to see how it could pay the plaintiff's claim even if she had already paid more than the face thereof, as all the receipts of the association are divided into two classes, the loan fund and the expense fund. The latter is dedicated to, and employed in, paying the current expenses of the association, and the loan fund contains all the money received which does not go into the expense fund as

therein provided. Hence, there never could be any fund from which such certificates could be paid, if the contention of the respondent is correct. We think it is not. We are of the opinion that the term "withdrawing shareholders" in that connection means not only shareholders who may withdraw before the maturity of their certificates, but also those who shall withdraw at that time or afterwards. Any other construction would result only in absurdity, and any interpretation which would produce such a result should, if possible, be avoided. Moreover, if the provisions relied upon to modify or change the absolute promise of the defendant to pay at the expiration of seventy-eight months, are at all inconsistent with that provision, still the promise ought not to be changed or modified by any provision of the contract which is less definite and certain than the promise itself. As the contract was prepared by the defendant, if there is any uncertainty or ambiguity as to its meaning it should be resolved in favor of the plaintiff. The defendant is responsible for it, as the language is wholly its own. (*Gillet* v. *Bank of America*, 160 N. Y. 549, 554.)

It is also pertinent to inquire what object the plaintiff or her assignor could possibly have had in purchasing stock, if she or he was to pay the full amount in cash, and then at the end of eleven years receive without interest only the principal which had been thus paid. Obviously the inducement to make such purchase was that the plaintiff and her assignor were to obtain a profit by thus investing their money, as one of the avowed objects of the association was to afford its members a safe and profitable investment of their savings. When we look at the terms, conditions, by-laws and articles of association we find, among other things, that a withdrawing member is to receive six per cent. upon his investment after six months and up to two years, the third year seven per cent., and after that until maturity eight per cent., and that the association may also mature any certificate after one

year and issue a paid-up certificate payable at maturity, with interest at six per cent. It may also cancel any unpledged certificate, by lot, upon the payment to the owner of the amount of the installments paid thereon, together with eight per cent. per annum as added dividend. Again, it may issue paid-up stock at the price of fifty dollars per share, payable on the date of issue, in which case, after the expiration of the time when it is to mature, the party will receive the sum of one hundred dollars. Thus, if the defendant's contention is correct, the member who withdraws before the maturity of his certificate, or whose certificate is matured by the defendant or canceled by it, or the member who purchases paid-up stock, will receive for the amount paid a much greater proportion than the shareholder who continues to the end and pays the full amount required by his certificate. These and other provisions of the contract show quite conclusively that it was not the intent of the agreement that the purchaser of shares, who paid for them in full, should receive only the amount paid by him, without interest, but that its purpose was that the investment should be a profitable one, and in furtherance of that purpose it was that this contract was made. This, like other contracts, should be so interpreted as to carry into effect the intent and purpose of the parties in making it. Can any one suppose for a moment that the plaintiff or her assignor, when she or he purchased this stock, with an agreement that it should mature at the end of seventy-eight months, even suspected that such maturity was to depend upon other conditions or circumstances than the expiration of the time? Obviously not. This contract must be interpreted as an agreement upon the part of the defendant to pay to the plaintiff and her assignor the amount of one hundred dollars upon each of the shares represented by the two certificates in suit at the expiration of seventy-eight months from their date and at the time indorsed upon the back thereof.

It was admitted by the pleadings, if not upon the trial, that prior to the commencement of the action the plaintiff made her proof of claim against the defendant, as required by the terms of the certificates, and that the same was rejected by it. Therefore, the plaintiff was entitled to recover the amount of the certificates in suit.

The contention of the respondent that the plaintiff should not recover for the reason that the application was not introduced in evidence, cannot be upheld. While the certificate recites that "in consideration of the membership fee, together with agreements and statements contained in the application for membership in the Association, and full compliance with the Terms, Conditions and By-laws printed on the front and back of this certificate, which are hereby referred to and made a part of this contract," it promised to pay as therein provided, still it is obvious that the application for membership was not in fact made a part of the contract, but preceded it and was only mentioned as a part of the consideration therefor. If there was in the application any statement or representation which might have formed a basis of defense, it should have been pleaded and proved by the defendant, and as there was no claim that the application constituted a defense the omission of the plaintiff to introduce it in evidence cannot be regarded as a defect of proof upon her part.

The only remaining question we deem it necessary to consider arises upon the contention of the defendant that it was unauthorized by the statute under which it was organized to make the contract in suit, and, hence, the plaintiff cannot recover. The defendant was organized under the provisions of chapter 122 of the Laws of 1851, and the statutes amendatory thereof and supplemental thereto. We deem it unnecessary at this time to determine whether the defendant was authorized by that statute to enter into such contracts, for if we assume that the making of them was in excess of the ex-

press power conferred upon the corporation by that statute, still, as the contracts involved no moral turpitude and did not offend any express statute, they were not illegal in a sense that would prevent the maintenance of an action thereon. It is now well settled that a corporation cannot avail itself of the defense of *ultra vires* when the contract has been, in good faith, fully performed by the other party, and the corporation has had the benefit of the performance and of the contract. As has been said, corporations, like natural persons, have power and capacity to do wrong. They may, in their contracts and dealings, break over the restraints imposed upon them by their charters; and when they do so their exemption from liability cannot be claimed on the mere ground that they have no attributes nor facilities which render it possible for them thus to act. While they have no right to violate their charters, yet they have capacity to do so, and are bound by their acts where a repudiation of them would result in manifest wrong to innocent parties, and especially where the offender alleges its own wrong to avoid a just responsibility. It may be that while a contract remains unexecuted upon both sides, a corporation is not estopped to say in its defense that it had not the power to make the contract sought to be enforced, yet when it becomes executed by the other party, it is estopped from asserting its own wrong and cannot be excused from payment upon the plea that the contract was beyond its power. (*Bissell* v. *Mich. So. & No. Ind. R. R. Cos.*, 22 N. Y. 258; *Whitney Arms Co.* v. *Barlow*, 63 N. Y. 62; *Rider Life Raft Co.* v. *Roach*, 97 N. Y. 378; *Holmes, Booth & Haydens* v. *Willard*, 125 N. Y. 75, 80; *City of Buffalo* v. *Balcom*, 134 N. Y. 532; *Bath Gas L. Co.* v. *Claffy*, 151, N. Y. 24; *Moss* v. *Cohen*, 158 N. Y. 240, 249; *Hannon* v. *Siegel-Cooper Co.*, 167 N. Y. 244.)

Our attention has been called to several cases in the Supreme Court where a doctrine adverse to this decision has been held, but after a full considera-

tion of those decisions, we have reached the conclusion that they should not be followed.

It is contended that if the construction we have given this contract is to prevail, it will affect the responsibility of the defendant, if it does not result in its bankruptcy. If that be true, yet it affords no proper reason why we should disregard the plain and unqualified terms and provisions of the contract. Nor does it furnish any excuse for us to disregard well established principles of law to hold it unenforceable. If it be true that the defendant cannot successfully continue its business upon the plan it has established without disregarding its contracts, or without making false or unauthorized promises to its stockholders to induce the unwary to pay their money to it upon contracts it does not intend to or cannot perform, no unmitigated calamity will be liable to befall the community in which its business is transacted by its suspension or by a final dissolution of the Association. It is better that it should fail than that it should continue to hold out false hopes to investors who may not only be deprived of their promised profits, but may ultimately lose the principal as well.

By these considerations we are led to the conclusion that the certificates upon which this action was brought had matured when it was commenced; that there was due the plaintiff thereon the sum of one thousand dollars and interest after sixty days from the presentation and rejection of the claims made under them; that the trial Court improperly nonsuited the plaintiff, and that the judgments of the courts below should be reversed.

The judgments of the Trial Term and of the Appellate Division should be reversed and a new trial granted, with costs to abide the event.

COPY.

FILED
JAN 14 1903
JAMES H. McKENNEY,

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 152.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Plaintiff in Error,

vs.

BRIGHT WILLIAMSON, Defendant in Error.

BRIEF FOR BRIGHT WILLIAMSON, DEFENDANT IN ERROR.

H. E. YOUNG,
Attorney for Defendant in Error.

CHARLESTON, S. C.
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1903.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1902.

No. 152.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Plaintiff in Error,

vs.

BRIGHT WILLIAMSON, Defendant in Error.

In Error to Supreme Court of South Carolina.

STATEMENT OF CASE.

The defendant in error, Bright Williamson, on the 28th day of January, 1891, applied for and on the 2nd February, 1891, received twenty-five shares of the defendant Company, a Building and Loan Association, incorporated under the laws of New York and having its chief place of business in Syracuse, N. Y., and doing business in Darlington, S. C., through a local board. At that time also it had a special agent, Samuel Carpenter, at Darlington, and upon his representations (made orally and by "Printed Literature") Williamson was induced to take the shares.

In the certificate of shares the Association "agrees to pay said shareholder * * the sum of one hundred dollars for each of said shares at the end of seventy-eight months from the date hereof." (s. p. 35.)

The "Printed Literature" at that time circulated by Carpenter as special agent of the Company and by him given to Williamson gave the same assurance, e. g.

"This Association has no auction sales; no bidding for loans, and a definite time for repaying a loan. s. p. 16. * * The only association making a definite contract in every respect. Stock matures in seventy eight months. Borrowers know the *exact* amount to cancel their mortgages." s. p. 17.

"In the past twenty-two months it accumulated a surplus of $1,890 78-100 over and above the earnings necessary to mature the stock in six and a half years." (s. p. 27.)

January, 1892, again $1,890 78-100. (s. p. 27.)

March, 1892—$2,203. (s. p. 27.)

March, 1893—"These 22 months have been more productive than the 26 preceding" (s. p. 28) and so on through the 6½ years that Williamson's stock ran (s. p. 28–29.)

This case has been twice before the Supreme Court of South Carolina: November Term, 1898, reported in 54 S. C. p. 582, and November Term, 1900, not yet reported on account of this appeal. This decree however will be found at page 94 of the present record. On the first appeal the Supreme Court of South Carolina decided:

"(1) That the proper construction of the contract between the parties was that contended for by the plaintiff (Williamson) and not that contended for by the defendant, viz: (that the shares matured at a fixed and definite term, 54 S. C. p. 504.)

"(2) That the contention that because the defendant has no money in its treasury applicable to the claim of the plaintiff (Williamson,) did not defeat the plaintiff's cause of action.

"(3) That the position taken by the defendant (The Eastern B. & L. Association) that the contract if construed to be a contract fixing a definite time for the maturity of the shares would be *ultra vires* could not be sustained." s. p. 145.

(4) That on this second appeal the only question left open was: "But the question whether the plaintiff (Williamson) had waived his right to insist upon his contract, as originally made,

by becoming a borrower some time after the plaintiff had received the certificates for the 25 shares, the par value of which he is now claiming, was left open, and that as it seems to us is the only question which is now open."

The plaintiff in error before the Supreme Court of South Carolina contended (Record p. 95) that the former decree of 18th April, 1899, was not conclusive, sed curia: "An examination of the record of the case before the Court at the time of the former hearing will show that this is a mistake, except so far as the answer is concerned; and that, being merely a statement in legal form of the grounds of defense, throws no more light upon the questions involved than the facts which were then before the Court afforded. An examination of the opinion of the Court in the former decision will show that the Court then had before it the terms of the certificates of shares, the 'literature' of the Association, that is, the printed circulars and leaflets issued by the Association, the express promises made by the duly authorized agents of the defendant, the fact that the plaintiff had effected a loan from the defendant, the charter and by-laws of the Association, and the fact that the defendant did not have in its treasury at the time when the shares matured (as contended by the plaintiff) the money applicable to plaintiff's claim, and that all these matters were considered and passed upon by the Court under the former appeal, except the question of waiver as above stated."

Again, "Exceptions 3, 4, 5, 6, 7, and 8, all impute error to the Circuit Judge in refusing to charge the several requests therein repeated, in reference to whether this was a New York contract, to be construed according to the laws of that State. These questions were distinctly made under the former appeal, as is shown by the points and authorities of counsel for defendant under the former appeal at page 589 of 54th S. C., above cited, and therefore cannot be renewed here. These exceptions are overruled."

The only part of the case decided in this second case was that of waiver by the defendant in error, and as the Court decided the question against the plaintiff in error the appeal was dismissed.

By the way of defence the plaintiff in error put in evidence its charter, certain Acts of the Legislature of New York and certain decisions of its Courts and asked the Court to make certain charges which are set out in the record.

LAW.

(1) MOTION TO DISMISS.

The defendant in error moves to dismiss this writ of error on the ground that the case was rested by the Court below on an estoppel of the plaintiff in error; that this ground was one independent of the Federal question and sufficient to sustain the decision; that the decision of the Federal question is not necessary to the disposition of this writ of error and that this Court is without jurisdiction of the writ of error.

ARGUMENT ON MOTION TO DISMISS.

The Court charged that the certificates of stock and other matters that enter into the contract are to be taken in connection with whatever representations in addition to those matters were actually made, at the time the contract was entered into and if it did make such representations which led to the making of a different contract from that expressed in its by-laws and charter, that such special contract was to govern rather than that expressed by its by-laws and charter. So the first question was: Did this Association induce the defendant in error by its literature or by verbal representations or any representations in addition to those contained in its certificates of stock and by-laws and other matters mentioned in the certificates, to enter into this contract; whether it intended him to believe that it was a contract for a "limited number of payments, &c." s. p. 134.

It will have been seen from the foregoing statement that the point of estoppel was the controlling one in the case. Much of the evidence at the trial was directed to it and the trial court in unequivocal terms charged that if the jury believed that Williamson had been mislead as to the effect of his contract by the representations of the plaintiff in error's agent, the jury could

find the contract to have been what the agent represented it to be.

The Supreme Court of South Carolina took the same view of the law. (Rec. s. p. 145.)

This case therefore as regards the jurisdiction of this Court comes within the principle of numerous cases decided by it in which it has refused to consider the Federal question where there is an independent ground in the case, on which it was rested.

The determination by a State Court of a Federal question adversely to plaintiff in error will not sustain the jurisdiction of the Supreme Court of the United States, if another question, not Federal, was also raised and decided against him and the decision thereof is sufficient, notwithstanding the Federal question to sustain the judgment.

The rule is thus tersely stated in Hammond vs. Johnston, 142 U. S. p. 78, by Chief Justice Fuller:

"It is well settled that when the Supreme Court of a State decides a Federal question in rendering a judgment and also decides against the plaintiff in error upon an independent ground not involving a Federal question and broad enough to maintain the judgment, the writ of error will be dismissed without considering the Federal question. Hopkins vs. McLean, 133 U. S., 380, Hale vs Akers 132 U. S. 554, Henderson Bridge Co. vs. Henderson City 141 U. S. 679."

Hale vs. Akers adds a large number of Supreme Court decisions to the above in an elaborate decree by Judge Blatchford.

See also Rutland R. R. Co. vs. Central Vermont R. R. 159 U. S. 641 and Hammond vs. Horton 169 U. S. 732.

Harrison vs. Morton, 171 U. S., 39.
Castillo vs. McConnice, 168 U. S., 674.
Bacon vs. Texas, 163 U. S., 207.
Egan vs. Hart, 165 U. S., 188.

Michigan vs. Flint, &c., R. R. Co., 152 U. S., p. 368, is very close to the present case, if not on "all fours" with it. There was a Federal question involved, as the State of Michigan claimed the land in question under a grant from the United

States. On a motion to dismiss : *Curia* "The Supreme Court of Michigan held that the State might be *estopped* by its acts, conduct, silence and acquiescence; that the only question necessary to be considered and determined was the question of estoppel; and after a full consideration of the facts applicable to this branch of the case, reached the conclusion that the claim of the State had no foundation in equity, justice or good conscience; and that it had become stale, and that the State was *estopped* to assert title in itself to the lands in question. As its judgment thus rested upon a decision of a question which was not Federal, this Court has no jurisdiction to review it, and the writ of error must be dismissed.

Adams County vs. Burlington and Missouri R. R., 112 U. S., 123."

The Court will not, in the case stated, enquire into the soundness of the decision on such other matter or issue.

Murdock vs. The City of Memphis, 20 Wall., 590.

Again : It is not a Federal question that the Court of a State refuses to follow the law of another State.

Terry vs. Davy, 107 Fed. Rep., p. 51.

Glenn vs. Garth, 147 U. S., p. 367.

In the last case, p. 367. *Curia:* "It is contended that the New York Courts did not give to the Statutes and jurisprudence of Virginia, and to the judicial proceedings in Virginia, the faith, credit and effect that they had by the law and usage at home * * * nor were the validity and effect of the Statutes of Virginia *denied* although so far as relied on, their proper construction and operation were considered by the Court of Appeals. * * * The distinction (p. 369) between the construction of a Statute and the validity of a Statute has frequently been adverted to by this Court." (Cases cited and jurisdiction denied.)

Mining Co. vs. Boggs, 3 Wall., 310.

"However that may be, there was no decision of the Court against the validity of such a license. The decision was, that

no such license existed; and this was a finding by the Court of a question of fact upon the submission of the whole case by the parties, rather than a judgment upon a question of law."

In Mallett vs. North Carolina, 181 U. S., p. 592.

Curia. "In the present case, as already stated, the Supreme Court of North Carolina did not refuse to consider the Federal questions raised in the petition, but disposed of them in an opinion found in the record. (State vs. Mallett, 125 N. C., 718.) Had that Court declined to pass on the Federal questions, and dismissed the petition without considering them, we certainly would not undertake to revise their action."

In this case the South Carolina Court decided, not that the Statutes and Laws of New York were invalid, but only that they were "inapplicable." (s. p. 138.)

It is not enough merely to claim the existence of a Federal Question. New Orleans vs Louisiana 185 U.S. 344

That the decision in this case in the South Carolina Court was based on estoppel, is made clearer by the South Carolina decisions themselves.

In Equitable B. and L, Association (a Georgia corporation) vs. Vance, 49 S. C., p. 407, (1897) a unanimous Court by Benet, A. A. J., says :

"The leading questions raised by the pleadings and the exceptions are : 1. Was the contract to be performed in Georgia, or in this State ? 2. Was the contract usurious ? The issue as to the place of performance is a mixed question of law and fact. The Circuit Judge reached the conclusion that the parties to the contract intended that it should be performed in Georgia. In this, after carefully considering the testimony, we can find no error. After thus concluding it followed, as a matter of course, that the defense of usury would fail, because it is laid down in the law of Georgia, that no fines, interest or premiums paid on loans, in any Building and Loan Association, shall be deemed usurious.' "

This doctrine has been reaffirmed in :

Hoffman's case, 50 S. C., 308.

Turner's case, 51 S. C., 33.

Pollock's case, 51 S. C., 420.
Tobin vs. McNab, 53 S. C., 73.
Carpenter vs. Lewis, 60 S. C., 35.

ON THE MERITS.

To recur to the decision of the Supreme Court of South Carolina. Its decision is based on three grounds :

1st. That it was *res judicata* on three points.

a. The proper construction of the contract (estoppel).

b. That because the defendant had no money in its treasury, did not defeat plaintiff's cause of action.

c. That the contention of the Association that if it did make a contract for a fixed definite time, it would be *ultra vires,* could not be sustained, and that all these questions had been decided in the previous case, and could not be reopened.

This decree was filed April 10th, 1899.

1st. Was the decree of 1899, of the South Carolina Court, *res judicata ?*

The Supreme Court of South Carolina has decided that it was (s. p. 146-147), and there is no assignment of error on this point.

It is very true that the first decree was on an interlocutory motion to dissolve an attachment. But

The subject matter was the same.

The parties were the same.

The precise points were raised.

Record, s. p. 145-146.

Williamson vs. Association, 54 S. C., pp. 584-585-588

Hart vs. Bates, 17 S. C., 40.

Freeman on Judgments, par. 252.

"Defences and causes of action once presented and considered cannot be again asserted in another suit without the violation of the principle of *res adjudicata.*"

"It is true that the doctrine of *res adjudicata* does not apply to *mere* interlocutory orders made in the ordinary progress of the case. In such orders, granted or refused upon summary application, it has been held that they are not so far conclusive as to prevent the same matter being drawn in question again in the regular form of a suit. But the reason of that rule does not apply where the matter, conclusive and final in its character, is gravely discussed, and the decision is appealable."

(Freeman on Judgments, par. 284.)

Surely if the first decree of the Supreme Court of South Carolina was so final and conclusive as to be *res adjudicata,* it was also appealable. It is now over two years since it was made.

We submit the point.

In McGourkey vs. Toledo and O. Ry., 146 U. S., 544-545, this Court says :

"Probably no question of equity practice has been the subject of more frequent discussion in this Court than the finality of decrees. * * * The cases, it must be conceded, are not altogether harmonious."

2d. The case itself.

The Association claims :

(1) That it was incorporated 1st March, 1890, under the Act of 1851 (Chap. 122), New York Laws.

(2) That the $100 on each share was payable at the end of 78 months, only according to the provisions of the Act of 1851, as interpreted by the New York Court, in the case of O'Mally v. Peoples B. and L. and S. Association, only at maturity; and that the 78 months were only an estimated period of its maturity.

(3) That Williamson's stock at the end of the 78 months had not matured—was not worth $100 per share. The Association denies also that the $937.50 is a set off, and claims that the shares cannot now be withdrawn, as they have been pledged.

The case of O'Mally v. Peoples B. and L. and S. Association, Mr. Pierce testifies, gave the law of New York, as existing since 1851. This Association was incorporated in 1890. Mr. Pierce is its General Attorney, and one of its Directors, and has been such since 1890. He is "familiar with the Laws of the State of New York regarding Building and Loan Associations; he has made said laws a special study in his relations to the Association as its General Attorney; my duties as such having practically taken all my time during a number of years past" (s. p. 64). He says that the assured 78 payments are only an estimated period.

With this perfect knowledge of the law, the defendant Association in 1891 put out through its printed literature (by which it acknowledges itself bound) that it is the *"only* Association making definite contract in every particular," * * * "giving a definite maturity contract." * * * "Stock matures in 78 months." It iterates, and reiterates this, not only by its other "printed literature," but also through Carpenter, whom, by special telegram, it recognizes as its Special Agent, with whom Williamson and others can deal "safely" (s. p. 18). Through Pooler, *et id omne genus.*

By these representations and assurances, it induced Williamson to subscribe for its stock.

What did Williamson know?

He was aware, by the "printed literature" circulated in the community of Darlington, of which he was a member, and specifically given to him, of the assurances and representations as to the definite maturity contract, etc., in 78 months. He was ignorant of the laws and decisions of New York on this subject. As a South Carolinian, a non-resident and non-citizen of New York, he was not bound, and could not be assumed to

know them. He was ignorant of the Charter and By-Laws of the Association (s. p. 33; s. p. 14–18).

On these representations, etc., and induced by Carpenter, he applies for stock.

The application (Ex. A, s. p. 33-34,) besides the printed literature, and Carpenter's representations, is, up to this time, the only thing shown to him. In it he agrees "to abide the terms, conditions and By-Laws referred to in the certificate of shares." But they are not shown to him. He knows them only as they have been represented to him by officers of the Association bound to know them, as stipulating that at the end of 78 monthly payments he will be entitled absolutely to $100 per share—$2,500. On the faith of all this, he applied for the shares, and that there might be to him no "place for repentance,"—having put his hand to the plough, he cannot look back; the application winds up :

"The price of stock MUST accompany this application" (s. p. 34). And it does.

Then he gets his certificate, containing again, on its face, in large type, "Maturing August 1st, 1897," and in the body, and in plain type, the agreement on the part of the Association to pay him "the sum of $100 for each of said shares at the end of 78 months, etc." (s. p. 35.) On the front and back of this certificate, received after the payment of "the price of the stock," are printed the terms, conditions and By-Laws, in small, almost illegible type. These are, then, for the first time, placed in Williamson's possession. Even then, trusting to the representations made to him, and perhaps kept off by the small and almost illegible type, and interminable length of the By-Laws, etc., he did not read them (s. p. 33).

To Carpenter, Pooler, and other officers of the Association, all this was thoroughly known. The conclusion cannot be resisted; that deceit was deliberately practiced.

This is actual fraud. *Dolus malus* of the worst kind. The Association and its officers combine and plot to cheat and defraud Williamson in particular, and an entire community, by conscious falsehoods.

If the statements as to past profits was false, the Association is guilty of fraud. If true, the shares of Williamson are matured, and Williamson is entitled to his money.

Fraud taints and rots everything, the entire mass, it touches, and it is impossible to separate the parts of a transaction tainted with fraud and say this rests on fraud, and this on honest dealing.

Lord Cranworth: "Whenever any one has, by wilful misrepresentation, induced another to part with his rights on the belief that such representations were true, this is in the plainest and most obvious sense a fraud."

Reynell vs. Sprye, 1 D. G. M. and G,, 691.

"Fraud avoids everything that it touches."

Fraser vs. City, 19 S. C., 402.

"If he (the defendant) resorts to unlawful means, and accomplishes a fraudulent purpose, the law will not stop to *measure the force* of such inducements. It is enough that the party was deceived and cheated, and the defendant's falsehood and fraudulent practice contributed to that end."

Sawyer vs. Menominee Building and Loan Association, 61 N. W., (Mich.) p. 523.

"Whenever an agreement or other like transaction has been procured by the means of a fraudulent representation by one of the parties, the other has an *election* of equitable remedies. The injured party may *compel the fraudulent party to* MAKE GOOD HIS REPRESENTATION * * * or he may rescind the agreement and procure the transaction to be completely cancelled and set aside. Such fraudulent misrepresentation, even though it relates only to a portion of a contract, furnishes a complete defence to the enforcement of the whole agreement."

2 Pomeroy Eq. Jur., Sec. 899.

The question involved in this case is a question of actual fraud; a matter of general law, of which every Court judges for itself; it treats the non-citizen just as if he were a citizen.

"All that a nation can therefore be justly required to do is to open its own tribunals to foreigners in the same manner and to

the same extent as they are open to its own subjects, and to give them the redress as to rights and wrongs as it deems fit to acknowledge in its own Municipal Code for natives and residents."

Story Conflicts of Laws, Section 556.

To the same justice that a citizen of South Carolina is entitled is this citizen of New York entitled, and no more. And it has got it. Preconceived and prearranged fraud has met justice. Public policy will not tolerate it anywhere. No more in New York than in South Carolina.

But did the Supreme Court of South Carolina in this case decide differently from that of New York, as plaintiff in error insists?

The following case was used before the South Carolina Court, viz:

Newman vs. N.Y. Mutual Savings and Loan Association, 17 App. Div., 72.

This was an action to redeem a mortgage to the defendant. The defendant, just as the Eastern Building and Loan Association, had put out annually flattering statements of its earnings, some of them made officially to the banking department of New York.

In 1891 the defendant issued a circular, known in this case as "Exhibit No. 18," which contained the following statement, among others:

"Maturity of Shares.—We cannot absolutely fix the time required for maturing shares. But with the rate now obtained for loans, a conservative estimate will place the maturity within 8 years."

The Court found as facts:

"That for the purpose of *inducing* the above named plaintiff to execute and deliver to defendant the bond and mortgage described in the complaint herein, on or about the month of April, 1891, *represented and stated* to plaintiff that he would have only $2,400 to pay on the principal; interest would be only three and one-half to four per cent., and he would *have to pay* on the mortgage *only from six and one-half to seven years,*

because the defendant had made from fifteen to twenty per cent. every year. The plaintiff *believed* such representations to be true, and was *induced* thereby to become a member of the defendant corporation, and a subscriber for twenty-six shares of stock." * * *

"Follett, J. The avowed purpose of this corporation, as disclosed by its articles, require it, its trustees and authorized agents, to exercise the utmost good faith towards all of its borrowing members; and, *in case representations are made respecting existing conditions, or the results of past experience which are untrue, and are relied on by the borrower, he becomes entitled to rescind his contract, upon paying the corporation such a sum as is just and equitable.*" . . .

"The Court found, as before stated, that the defendant *represented that it had made from 15 to 20 per cent. every year.* This was a representation in respect to an existing fact. If it were false, the plaintiff is entitled to rescind his contract."

In the above case the maturity of the shares was specially not "absolutely" fixed; but in this (Williamson's) case, the maturity of shares, both by representation and written contract, was "absolutely" fixed, and by the showing of the Company, the 25 shares of Williamson were fully worth, on the 1st of August, 1897, (the day the 78 months ended) $2,500, and paid his debt of $937.50, and left him a surplus of $1,572.50.

It is, perhaps, well to note here that the case of O'Mally, so much relied on by the defendant, rests in part at least on the ground that any other result "would, in all probability, bankrupt the Association, a result which it would seem must have been *apparent* to the parties when the transaction took place."

No such result was apparent to Mr. Williamson; on the contrary, he denies it without contradiction, and, according to the officers of the Association, compound interest, fines, entrance fees, etc., would prevent any such disaster.

"Paid up stock doubles in six and one-half years," proclaimed the Company to induce membership (s. p. 16).

Moreover, in the O'Mally case, of which only the decree, and not the record, is in evidence, there is no word of represen-

tations, as in Williamson's case, by "printed literature," or by agents, on which estoppel could be based. The only things before the Court were the certificate and the articles of association, by-laws, and terms and conditions printed on the back of the certificate, which made up the contract (s. p. 110), and by these the period of five years, mentioned in the certificate, was construed as simply estimated.

In Lowes case (s. p. 123), the Court expressly excludes the idea of fraud and misconduct. Williamson's case is wholly different. It teems with the fraud of the Association and its officers, certainly of estoppel by their representations, which, if true, conclude the case; and, if false, make such a case of fraud as is found in no other case cited by either side.

There are two cases to which we specially ask the attention of this Court :

(1) International Building and Loan Association v. Bratton, (Ind.) 56 N. E., p. 105.

The mortgage given by Bratton to this Association for a loan, stipulated that the repayment was to be by monthly dues of 75 cents a share; monthly interest, 5 per cent.; monthly premiums, 5 per cent.; fines, etc., as usual, for the period of 78 months. Bratton performed his part of the contract, and then stopped paying. The Association claimed that it could not make such a contract, because it was *ultra vires*, and "destroys the mutuality which must exist between the members of a Building and Loan Association."

Curia. "The doctrine of *ultra vires*, no matter how interpreted, is always 'ungracious and odious.' It is looked upon with disfavor by the courts, for it enables the corporation to repudiate its contracts, and take advantage of those who have dealt with it in good faith. *Prima facie*, all contracts of corporations, public or private, are valid, and it is incumbent on those who impeach them to show they are invalid.

Smith v. Board, 6 Ind. App., 153. 33 N. E., 243."

"It is the established rule of law in this State that where a

contract has been executed by a corporation, and *fully performed according to its terms,* by either of the parties to it, neither party will be permitted to say that the contract was not within the power of the corporation.

"Wright v. Hughes, 119 Ind., 324. 21 N. E., 907, etc.

"Arms Co. v. Barlow, 63 N. Y., 62. It was said by Mitchell, J., in Wright v. Hughes:

"The law never sustains the defense of *ultra vires* out of regard for the corporation. It does so only when the most persuasive considerations of public policy are involved. The contract was enforced."

(2) Sawyer v. Menominee Loan and Building Association, 61 N. W., (Mich., 1894,) p. 521.

Curia. "The taking of the stock and procuring the loan were all one transaction. James H. Walton was Secretary of the Association, and acted in the transaction in behalf of the defendant. Complainant claims that, before he subscribed for the stock, *Walton,* in setting forth the advantages to be gained by a borrower, among other things, *represented* that such borrower could pay a loan at any time, at the end of any quarter, and could settle on the basis of the loan's being *cancelled in eight years,* and at one-eighth thereof each year, taking the actual money loaned as a basis, and, so far as the settlement was concerned, disregard the premium bid for the loan. The *Secretary explained* that the Association could do this, because of the advantage it had in compounding interest monthly, and receiving interest on premiums and installments on premiums, and that the right to settle on this basis was plainly guaranteed by the By-Laws. Complainant claims that, *relying upon these representations,* he did *not examine the By-Laws,* but agreed to take a loan of $4,500, and subscribed for 45 shares of the capital stock of the Association, having bid for such stock 22½ per cent. premium."

After paying for 17 quarters, Sawyer decided to pay his loan on the terms represented to him by the Secretary. There was no "printed literature" here; only the verbal representations of the Secretary. Sawyer was refused, and he tendered the

money and filed his bill to have the bonds and mortgages cancelled.

Curia. "It is evident from all the testimony, that complainant took the loan in good faith, and in *full reliance* upon the interpretation given by the Secretary. . . . . If that interpretation had been adhered to by the Company, he could have settled at any time. We think *he is now entitled* to have the contract *construed in the light* of the By-Laws, *as they were represented* to be." . . . .

"Whether such misrepresentations were intended, or were mere matter of mistake, the *complainant has been misled, to his injury;* and the law is well settled in this State that it is immaterial whether a false representation is made innocently or fraudulently, if, by its means, the party is injured.

"Holcomb v. Noble, 69 Mich., 396. 37 N. W., 497.

"Totten v. Burhans, 91 Mich., 499. 51 N. W., 1119.

"We do not think that the rule laid down by the Court below, that the complainant *had the opportunity* to find out what the By-Law was, and *therefore could not complain,* if he did not protect himself, *can be sustained.* The parties were not standing on an equal footing. The secretary represented the company, and the complainant might well rely upon the interpretation of the by-laws which the secretary gave. Complainant did not see the by-laws. They *were not exhibited to him.* The secretary claimed to know what interpretation the company put upon them, and the complainant chose to rely upon such representation.

"The rule laid down by Lord Chelmsford, in Railway Co. v. Kisch, L. R., 2 H. L., 121, it seems to us, is specially applicable to the present case. It was there said: 'When once it is established that there has been any fraudulent misrepresentation, or wilful concealment, by which a person has been induced to enter into a contract, it is no answer to his claim to be relieved from it to tell him that he might have known the truth by proper inquiry. He has a right to retort upon his objector. '*You, at least, who have stated what is untrue,* or have concealed the truth, *for the purpose of drawing me into a contract,* cannot

accuse me of a want of caution, because I relied *implicitly upon your fairness and honesty.'* "

Cf. National Savings Assn. v. Neely (Pa.) 46 Atl. p. 919.

The most recent work on Building and Loan Associations—that by Judge Thompson, in the 7th Volume of his monumental work on corporations, lays down the following, in Section 8756: "An arrangement for the repayment of loans, and withdrawal of members, different from the terms prescribed therefor, in the statute or charter, when wholly or partially executed, cannot, whether it be *ultra vires* or not, be rescinded or questioned by either party," with authorities.

So far as "the mutuality of members" of these associations is concerned; (that is, the partnership theory,) that was ended in England when Lord Ch. Selbourne for the House of Lords decided as to a Building and Loan Association.

"This is not a joint stock company, still less is it a common law partnership." * * *

"It is impossible in my view for the society to say that the instalments as received from time to time are not to be ascribed as payments to the advance. It is perfectly clear that they must be so ascribed."

Concurred in by the whole Court, Lords Bramwell, Watson and Fitzgerald sitting.

Brownlee v. Russell, H. L. Law Rep., 8 App. Cases, 248.

See also Tosh v. North British Building Society, following the above, Lords Herschell, Blackburn and Fitzgerald sitting.

House of Lords, Scotch, 11 App. Cases, 496.

And "in the State of South Carolina from the time of the decision of Bollinger's case (Association vs. Bollinger, 12 Rich. Eq., 124, 1860,) its Courts have held such a dealing as considered here (a member getting advances on his shares) was a loan, and not a partnership."

Pollock v. Association, 51 S. C., 424.

We beg to read the following from the decree in this case when first before the Supreme Court of South Carolina, 54 S. C., p. 593-594:

"It is a well known fact that comparatively few people who become shareholders in such Associations are familiar with their by-laws. They rely upon the honesty, integrity and fair dealing of those who manage the affairs of the Association. It is also a well known fact that the by-laws are frequently intricate and almost unintelligible to the average shareholder, and that those in charge of the affairs of the Association usually become exceedingly expert in the interpretation of them, thus giving the Association a decided advantage in the way of information over the shareholders. Public policy, in order to prevent the perpetration of fraud, and to prevent just such a case as we now have before us, in which the plaintiff alleges that he was induced by the express promises and the literature of the defendant to part with his money, in purchasing its shares of stock, demands that the defendant should not be allowed to elect whether it will be bound by its by-laws, or its express agreement, as to the time when the shares would mature. * * * This court has the right, therefore, to construe the circular. It unquestionably shows that the defendant interpreted the contract to mean that the shares would *mature at a fixed and definite period.* It is a well settled principle that when the construction to be given a contract is rendered doubtful by the language thereof, the interpretation of the contract by the parties themselves is entitled to great weight. Chicago v. Sheldon, 9 Wall., 50; Railroad Co. v. Trimble, 10 Wall., 367; Steinback v. Stewart, 11 Wall., 566; Lowber v. Bangs, 2 Wall., 728. Our conclusion as to the proper construction *of the contract is in harmony with the interpretation placed upon it by the defendant,* and this is an additional reason why the by-laws should not prevail against the express agreement fixing the time when the shares would mature."

Cf. The recent insurance case (6 June, 1902,) of Home Savings Inst. vs. Noblesville, &c, Church. 64 N. E., 479.

A contract for the loan to the defendant having been made

innocently by both parties, the ordinary bond and mortgage, differing from the agreement, were executed; it was held "*fraud*" in the Association to set up and insist on such bond and mortgage.

See Wagner, &c., Assn. vs. Skelton (Ind.) 61 N. E., p. 951, showing that while as a rule shares mature only when they reach the par value, and

Assn. vs. Bratton, (Ind.,) 56 N. E., p.167.

Assn. vs. Wagner, (Ind.,) 23 N. E., 689.

that if a specified number of payments is named, the bond and mortgage are extinguished on such payments, and Hartman vs. International B. & L. Assn., (Ind.,) 62 N. E., p. 6, that this is the rule also where the "representation" of the agent of the association as to such payments is false.

Though not strictly applicable to this case, attention is called to the Eastern B. & L. Assn. vs. Welling, 181 U. S., p. 48. There the question raised in this case, was decided against that association because raised too late, but the remarks of the Court are significant.

Loan of $937.70 on the Stock as Collateral.

The history of this transaction is free from doubt. Williamson's testimony as to the facts is nowhere contradicted.

In 1895, Carpenter, the special agent of the Association, induced Williamson to borrow on his stock as collateral $937.50, assuring him "that by so doing that I (Williamson) would be borrowing from the Association as from a bank, and that it would *not alter my* status as a shareholder" (s. p. 22-23).

To clinch this assurance, Williamson wrote to the General Manager (Pooler) of the Association, at Syracuse, N. Y., on 16th April, 1895, as follows:

"As I understand this contract, I may pay up the principal sum at any time, and the monthly payments of $6.25 will then be discontinued, and *my stock will be just as it is now to me.*" (s. p. 23.)

To which, on 19th April, 1895, Pooler replies:

"Your esteemed favor of 16th inst. came duly to hand . . your understanding is correct with reference to the payment of principal, and discontinuance thereafter of interest upon the loan. As I desire this to catch the first Eastern mail, I must reasonably be brief." (s. p. 23.)

Ambiguous perhaps, and showing the same intentional fraud, and deliberate and ingenious deceit that has invariably characterized the Association and its officers, but with every honest man, assenting to everything said by Williamson.

"If he (defendant) resorts to unlawful means, and accomplishes a fraudulent purpose, the law will not stop to measure the force of such inducements. It is enough that the party was deceived and cheated, and the defendant's falsehood and fraudulent practices contributed to that end."

James vs. Hodsden, 47 Vt., 137.

With what has been said before on the subject of misrepresentation, we may dismiss this matter. It only shows the object the Association wished to gain by its deceitfully inducing Williamson to take a useless loan. He was the President of the Bank in Darlington, (s. p. 19) and could get such loans as he needed from it. So these loans and the investment in its stock of the Association must be made specially attractive to him to gain him as a customer. He carried no doubt financially great weight in Darlington, and his subscription and his borrowing would doubtless lead many others to follow his example.

So promises are made freely—promises intentionally false—deliberately repeated with no intention of keeping them; till Williamson has served their purpose of bait, and then they turn on him.

Waiver.

Did Williamson waive his right to have his stock mature on 1st August, 1897, on 78 payments, as printed on the certificate

of stock issued to him (s. p. 25-26), when he borrowed the $937.50 in 1895?

"A waiver must be an *intentional* act with *knowledge.*"

Darnley vs. London, etc., Ry. Co., L. Rep., 2 H. L., 57.

"A waiver of a stipulation in an agreement must, to be effectual, not only be made *intentionally,* but with knowledge of the circumstances."

Bennecke vs. Conn. Mutual L. Ins. Co., 105 U. S., 359.

"Waiver is usually a question of intent; and knowledge of the right and *intent* to waive it must be made to appear *plainly.*"

28 Am. and Eng. Encyc. of Law, p. 528.

"A man does not lose his rights without *intention,* or facts fairly equivalent to *intention.*"

Bigelow Estoppel, Ed. 1890, p. 663.

The only *intention* of Williamson is to be found in his uncontradicted testimony that he would not borrow the $937.50 until assured that it would not affect his stock. The special agent of the Association had assured him that it would be "just as if I was borrowing from a bank, and that it would not alter my status as a shareholder." (s., p. 22, 23, 24.

And in his letter of 16th April, 1895, to the Association, Syracuse, N. Y.: "As I understand this contract, I may pay up the principal sum at any time * and (then) my stock will be just as it is to me." (s. p. 23).

The answer to this by Pooler, General Manager of the Association, says: "Your understanding is correct." (s. p 23.) If written honestly, it can only apply to the entire note of Williamson. If written as a trap to catch Williamson, as a deliberate deceit and a premeditated fraud, it may perhaps be restricted to "the payment of principal and discontinuance of interest." But with the previous assurances of Carpenter, and the apology of Pooler, for being "necessarily brief," Williamson, and no honest man could have understood it except as applying to his whole note.

And so the jury of Darlington as honest men have interpreted it, and it was a *question for the jury.*

"Whether it (a right) has been waived in a given case is *entirely* a matter of *intention*." "And there was no error in the Judge submitting it to the jury as a *question of fact*."

Hammond vs. Rd. Co., 15 S. C., 35.

Has Williamson's contract been varied by the change of the By-Laws of the Association?

The By-Laws in existence when Williamson became a member, and printed on the back of his stock, provides (s. p. 48) that any member so wishing can withdraw his stock.

The amended act of incorporation adopted 1894 limits the right to shares which are not pledged (s. p. 89)

Can this apply to Williamson's shares? Unless expressly declared retroactive, laws are not such.

1 Thompson's Corporations, Section 1010.

Knights Templars vs. Jarman, (C. C. A.) 104 Fed., 643.

Nor can they, even if declared retroactive, disturb vested rights.

Ib., Section 1019.

Ib., Section 8757.

Even where the charter gives the right to alter, amend and repeal its By-Laws, it cannot do this so as to impair rights vested under it.

Ib., Section 1019.

Ib., Section 8737.

Citing Kent vs. Quicksilver Mining Co., 78 N. Y., 159.

Cf. Knights Templars vs. Jarman (C. C. A.) 104 Fed., 643.

Cf. Vestry vs. Matthews, 4 DeS. 585.

Palmetto Lodge vs. Hubbell, 2 Strob., 463.

Association vs. Bollinger, 12 Rich. Eq., 136.

A. and E. Enc. of Law Vol. 4 (2nd Ed.) 1019, notes.

Supreme Council, &c., vs. Getz, 112 Fed. Rep. 119.

There is nothing in the Amended Laws which gives the slightest intimation that they were intended to be retroactive.

Further :

A look through the sections concerned will make it manifest that the word *withdrawal* is applicable only to members retiring from the Association *before* the maturity of their shares. This privilege is accorded, it is true, only to unpledged shares, but it does not affect or concern shares *that have matured.* These, under the contract, when once matured, must be redeemed. They no longer depend on a privilege, allowing a withdrawal from the contract on terms before its completion; but stand on their contract giving them the right to be settled with, when they have done all required of them. It is true that pledged shares could not be withdrawn *before maturity;* but it is not true that pledged shares, that have reached maturity, have not the right to demand payment of the contract value of their shares, less the amount of any loan on the same. This is perfectly evident from the language of Article XII of the Charter and By-Laws of 1890, which reads : "Shares which are not pledged, may be withdrawn *before maturity,* provided the same are in good standing, and all dues and fines have been paid to date."

The CHARGE of Judge Klugh fairly and clearly submitted these questions of fact to the jury.

(1) Did the defendant Association agree with Williamson "that upon the payment by him of these 78 instalments, together with the membership fee, it would then repay to him the full amount of $100 upon each and every of the said shares of stock ? " (s. p. 132-133-134.)

The jury answered : Yes.

(2) Did Williamson pay these amounts ?—"perform all the conditions ? " (s. p. 132-134.)

The jury answered : Yes.

(3) Did Williamson borrow from the Association subsequently $937.50, "under a distinct and definite agreement with the defendant?" Did Williamson pay all the charges, interest, etc., on this loan, so that now these $937.50 should be set off against the $2,500 due to Williamson? (s. p. 132-137.)

The jury answered: Yes.

(4) Was Williamson's contract with the Association, that he "should keep on paying until, by the books of the Association, or in some other way—whatever way the Association reached the conclusion—until the shares should arrive at the value of $100 each?" (s. p. 133.)

The jury answered: No.

(5) Did the Association, by literature, written or printed representations, or by verbal representations, induce Williamson to enter into this contract? Did it induce Williamson to believe that it was a contract for a limited number of payments?

The jury answered: Yes.

(6) Judge Klugh then makes the only real ruling on law contained in his charge, and that is in accordance with the previous decree of this Court in this case, viz:

"The principle of *ultra vires* cannot enter in this case."

The jury, of course, did not pass on this. (s. p. 135.)

(7) Did Williamson waive the provisions of his original contract, when he made the subsequent loan of $937.50 from the Association?

The jury answered: No.

The point of law, ruled in connection with this point, that the defendant must prove the waiver by the preponderating weight of evidence (s. p. 136) is so self-evident, that it hardly should be called a *ruling* on a law point.

We submit that the verdict of the jury can only be understood as above. If so, then all the questions of fact have been definitely and irrevocably settled.

H. E. YOUNG,
For Defendant in Error.

Charleston, S. C., 1st November, 1902.

And "findings of fact by the State Courts are, on a writ of error, conclusive with us."
Jenkins v. Neff. 186 U. S. 23.

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Clerk.

152

EASTERN BUILDING AND LOAN ASSOCIATION,
of Syracuse, N. Y., Plaintiff in Error,

v.

BRIGHT WILLIAMSON, Defendant in Error.

Since the printing of the argument of the defendant in error, there has appeared the case of Vought v. Eastern Building and Loan Association, of Syracuse, N. Y., decided in the Court of Appeals of New York, on 2nd December, 1902.

Published 65 N. E. Rep., 2d January, 1903.

HEAD NOTE.

"1. A certificate of a building association provided that in consideration of the membership fee, the agreements in the application for membership, and compliance with the conditions and by-laws printed on the certificate, the association would pay $100 for each of the shares held by a member 78 months after the date of the certificate; the amount of monthly installments and the maturity of the certificate being fixed by the indorsement on the back thereof. *Held*, that the holder of the certificate on maturity, the installments having been duly paid, is entitled to the par value of each share of stock held under such certificate.

"2. The conditions and by-laws of a building association, printed on the certificate and made a part of the contract of membership, provided that the shareholder should pay 75 cents a month on each share until it matured, or was withdrawn; that shareholders should pay monthly 75 cents a share until the same should be fully paid,—the amount to be paid at maturity of the shares to the shareholders being $100 per share, and the profits to be apportioned among the shareholders, and no money to be withdrawn from the loan fund except for the making of loans on good security. *Held*, that such provisions were not incon-

sistent with the promise to pay the amount named in the certificate, so as to show that such payments were to be made only in the event that there had been paid a sum upon the shares held under the certificate which, with the profits apportioned thereto, would amount to its face value.

"3. A provision contained in a certificate of membership in a building association that no money should be drawn from the loan fund except to make loans on security, and to pay amounts due withdrawing shareholders, does not prevent the payment of an amount called for by the certificate on its maturity; the term "withdrawing stockholders" meaning those who withdraw at the maturity of their certificate, or afterwards, as well as those withdrawing before the maturity thereof.

4. Omitted, as not pertinent.

"5. In an action by a member in a building association on his matured certificate, it is no defense that defendant was unauthorized by the statute under which it was organized to make a contract to pay a fixed sum thereon at the maturity of the certificate, where the contract was made in good faith, and was fully performed by the member, and the building association had the benefit of such performance.

This case renders further argument unnecessary, as the Court of Appeals of New York, though on different grounds, has decided exactly as the Supreme Court of South Carolina. The South Carolina Court has not refused to "give full faith and effect to the * * judicial proceedings of the State of New York," but the decisions of both States are in exact conformity, both made as to the same party—The Eastern Building and Loan Association, of Syracuse, N. Y—fixing its rights and liabilities in exactly the same way.

H. E. YOUNG,
For Defendant in Error.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 152.

EASTERN BUILDING AND LOAN ASSOCIATION, OF SYRACUSE, N. Y., Plaintiff in Error,

vs.

BRIGHT WILLIAMSON, Defendant, in Error.

In Error to the Supreme Court of South Carolina.

REJOINDER OF THE DEFENDANT IN ERROR TO THE SUPPLEMENTAL AND REPLY BRIEF FOR PLAINTIFF IN ERROR.

H. E. YOUNG,
Counsel for Defendant in Error.

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Counsel for Defendant in Error.

"REPLY I. Page 1." VOUGHT'S CASE.

Plaintiff in error seeks to differentiate this case from Williamson's, on the ground that Williamson became a borrower in 1894. Vought's case, the New York Court says, is "under the provisions of Chapter 122, of the Laws of 1851, and the Statutes *amendatory* thereof and *supplemental* thereto," and its

decision is in regard to all these. The same is true of Williamson's case. Further, the fact of his having borrowed money makes no difference, as he borrowed on the assurance from the Association's officers, that :

"It will not alter my status as a shareholder." "My stock will be just as it is now." (s. p. Record, 22, 23.)

And yet further, there is no evidence that the amended "articles" were ever served on Williamson, or ever brought to his notice.

We beg simply to recall these facts. The case speaks for itself. Counsel for the plaintiff in error wishes the Supreme Court to shut its eyes to the case, "even though it takes judicial notice of the statutes and jurisprudence of the States."

Greenleaf Evidence, paragraph 6.

" REPLY III. Page 9."

The testimony as to the representations—"the literature" —as constituting a part of the contract in this case, was introduced over the objection (which, however, did not apply to its admissibility *per se,*) of the plaintiff in error. (Record, s. p. 15-18.)And the court submitted to the jury the consideration of this "literature." (s. p. 184.)

On appeal to the Supreme Court of South Carolina, the admission of this "literature," and of its submission to the jury as a part of the contract, is not appealed from. On the contrary, in the 12th request to charge of the plaintiff in error, (Record, s. p. 142,) its admissibility is practically conceded. There is no assignment of error on this point, in this Court. Whether Judge Klugh decided correctly or not, still his decision is now the law of this case, and cannot, under the 21st rule of this Court, be considered.

Murdock v. Memphis, 20 Wall., 590.

But further it is not a Federal question.

Even if this "literature" cannot be considered an evidence of fraud, it certainly constitutes an estoppel in pais, and this need not be pleaded.

Bigelow Estoppel, p. 699, note 1.

And even if Judge Klugh had improperly admitted it, yet "where an estoppel in pais is not properly pleaded, but on the trial evidence is introduced without objection, the objection to the pleading will be deemed waived, and the case will be considered as though the estoppel had been properly pleaded."

2 Estee's Pleading, par. 3772.

"REPLY V. Page 10." RES JUDICATA.

Counsel for defendant in error admits that in his opinion the decision of the Supreme Court of South Carolina in so far as the Supreme Court of the United States is concerned, is not, *per se,* res judicata, because as it left open the question of waiver, it was not a final decree.

But the record of the former case (Record, s. p. 13,) is in evidence. "The brief in the case was then introduced," means in South Carolina the entire record, with complaint and all other pleadings, and all decrees, orders, etc. (Rules Sup. Ct. So. Ca., V, p. 264, Code 1902.) There is no appeal from its admission. It is not printed at length, but it is fully set out by the present decree of the State Supreme Court. (s. p. 144-146.) I presume that this induced Messrs. Brown and Spain, who managed the case for the defendant and plaintiff in error respectively, in Darlington, not to burden this record with the case.

But referring to the case it will be seen that the ground for resisting Williamson's attachment was that he had *no cause* of action, and thus all these questions came up, and were fully argued. (s. p. 146.)

Burrill vs. Letson, which had helped to make Mr. Petigru's great reputation, and which had established the law in South Carolina for over half a century, was held no longer applicable, on account of the change of statutes on the subject, and the case decided against the plaintiff in error.

Again, however, we submit that inasmuch as this part of the present decree of the Supreme Court of South Carolina is not assigned as error, it also becomes the law of this case, and cannot, except under the 21st Rule of this Court, be re-argued.

Lastly. That suit must be brought in Onondaga, N. Y., in six months. This point was not before the Circuit Court—not being ruled on—nor before the Supreme Court of South Carolina—not being a ground of appeal—nor is it assigned as error to the Supreme Court of the United States.

Consequently it also is not before this Court.

A point not brought to the attention of the Judge below, and not ruled upon, is not before this Court. (Supreme Court of S. C.)

Hyne vs. Erwin, 25 S. C., 232.

This Court (Supreme Court of U. S.) will not, and cannot consider points *not shown* to have been made in the Court below, or in the exceptions to the judgment appealed from.

Rule XXI, Section 4. Stevenson vs. Barbour, 140 U. S., 48; 2nd Foster, 1076.

The other matters have already been noticed.

H. E. YOUNG,
Counsel for Defendant in Error.

Supreme Court of the United States.

No. 152.—October Term, 1902.

Eastern Building and Loan Association of Syracuse, New York, Plaintiff in Error, *vs.* Bright Williamson. } In error to the Supreme Court of the State of South Carolina.

[March 23, 1903.]

This action was commenced on January 12, 1898, in the Circuit Court of Darlington County, South Carolina, by Bright Williamson against the Eastern Building and Loan Association of Syracuse, New York, to recover the face value of twenty-five shares of stock in the defendant association, less a sum theretofore borrowed by the plaintiff from the association. Judgment in his favor for the full amount claimed was rendered in the trial, affirmed by the Supreme Court of the State, (62 S. Car. 390,) and thence brought here on this writ of error.

The case is similar to that of *the same plaintiff in error* v. *Ebaugh*, (185 U. S. 114.) Here, as there, the stock certificates contained an absolute promise to pay "the sum of one hundred dollars for each of said shares at the end of seventy-eight months from the date hereof." Here, as there, circulars were shown to the plaintiff to induce his subscription, one of which contained this statement:

"For the investor.

This association issues three classes of certificates, designated as instalment, paid-up and fully paid. All of which are guaranteed to mature in 6½ years.

Amply secured by first mortgages on real estate.

Paid-up stock doubles in 6½ years.

Fully paid certificates guaranteed.

Quarterly dividends, 7 per cent per annum.

For the borrower.

This association has no auction sales.

No bidding for loans.

And a definite time for repaying a loan."

Another, the following:

"'Only association giving investor and borrower definite maturity contract in 78 months. Only association issuing definite contracts.'"

The defendant pleaded that there was no absolute promise to pay at the end of seventy-eight months, but only an estimate of the time at which the stock would mature; that an absolute promise to pay at the end of

seventy-eight months was inconsistent with the nature of the corporation as a mutual company and against the provisions of its charter and by-laws, and also illegal by the laws of New York under which the company was incorporated.

On the trial before a jury, defendant, in support of its answer, introduced the charter and by-laws of the company, the statutes of New York under which it was incorporated, certain decisions of the courts of that State, and the testimony of the assistant secretary and actuary of the defendant that the shares of stock had not, in fact, matured; also the deposition of its general attorney, who, after affirming his familiarity with the law of that State regarding building and loan associations, of which, as he said, he had made a special study, testified that, under the defendant's articles of incorporation and by-laws, and the laws and decisions of New York, the heretofore referred to clause in the certificate of stock "is not to be construed or held as a guaranty period of maturity, but, on the other hand, an estimated period," and that the association is not required to pay the face value of the certificates until "the amount paid by the plaintiff on his shares of stock, augmented by the earnings apportioned and credited thereto, equal the par value." Upon this testimony the defendant asked the court to charge the jury that full faith and credit must be given to the laws of New York, as construed by its courts, and that by reason thereof, "under the terms of the contract of membership, and the contract of loan, by-laws and charter, the transaction between the plaintiff and defendant does not terminate merely upon making a fixed number of payments, but only when the dues paid in by him, with the profits apportioned to his shares, make them equal their par value of $100.00 per share." Other instructions of a similar nature, or looking to the same result, were also asked, but all were refused.

Mr. Justice BREWER delivered the opinion of the Court.

The Federal question presented arises on the contention that the South Carolina courts did not give "full faith and credit . . . to the public acts, records and judicial proceedings" of the State of New York, as required by section 1, article IV, of the Constitution of the United States.

Courts of one State do not take judicial notice of the laws of another State, whether written or unwritten. They must be proved as facts. (*Talbot* v. *Seeman*, 1 Cranch, 1, 38; *Livingston* v. *The Maryland Insurance Co.*, 6 Cranch, 274; *Ennis* v. *Smith*, 14 How. 400, 426; *Pierce* v. *Indseth*, 106 U. S. 546, 551; *Chicago & Alton Railroad* v. *Wiggins Ferry Co.*, 119 U. S. 615, 622; *Lloyd* v. *Matthews*, 155 U. S. 222; *Building & Loan Association* v. *Ebaugh*, 185 U. S. 114, 121; *Nashua Savings Bank* v. *Anglo-American Co.*, *ante*, .)

The law of New York was so proved in this case, and the contention is that it was not rightly construed by the South Carolina courts; that the law of New York which entered into and formed a part of the contract sued on was not given by those courts the same force and effect that it had in New York, and that hence the rights secured by the Constitution of the United States to the plaintiff in error were denied. If it appeared that the South Carolina courts, without questioning the validity, simply construed a statute of New York, no Federal question would be presented. (*Glenn* v. *Garth*, 147 U. S. 360; *Lloyd* v. *Matthews*, 155 U. S. 222; *Banholzer* v. *New York Life Insurance Co.*, 178 U. S. 402; *Johnson* v. *New York Life Ins. Co.*, 187 U. S. 491.)

But it is contended that the construction of the New York statutes as applicable to this contract was shown by the decisions of the courts of that State and the opinion of one learned in its laws; that there was no contradictory testimony, and, therefore, it was the duty of the South Carolina courts to find as a fact that such was the true construction.

The promise to pay one hundred dollars at the end of seventy-eight months is plain and unambiguous. It is a positive promise to pay at a fixed time. The circulars presented by the company to the plaintiff as an inducement for his subscription only emphasize the certainty of the promise. So, if the inquiry were limited to the mere language of the promise and the representations which led up to it, but one decision was possible. It is said that the promise made in the certificate is expressly based upon "full compliance with the terms, conditions and by-laws printed on the front and back of this certificate;" that one of the conditions expressed on the face of the certificate is: "The shareholder agrees to pay, or cause to be paid, a monthly installment of seventy-five cents on each share named in this contract, the same to be paid on or before the last Saturday of each month until such share matures or is withdrawn;" that it contained this further stipulation: "Payable in the manner and upon the conditions set forth in said terms, conditions and by-laws hereto attached," and that these matters thus referred to had the effect of changing the absolute promise to a conditional one. All these were received in evidence, and when so received it became a matter of judicial construction to determine whether they had such effect, and that was a question which, nothing else being shown, was for the consideration of the courts in which the litigation was pending. In like manner, after the decisions of the courts of New York were received in evidence, their meaning and scope became matters for the same consideration. While statutes and decisions of other States are facts to be proved, yet when proved their construction and meaning are for the consideration and judgment of the courts in which they have been proved. Nor is the rule changed by the testimony given in the deposition of defendant's counsel, for, as he states, his opinion is based on

the statutes, the articles of incorporation and the decisions admitted in evidence, together with similar decisions of other States under like statutes, articles of incorporation and by-laws. No witness can conclude a court by his opinion of the construction and meaning of statutes and decisions already in evidence. (*Laing* v. *Rigney*, 160 U. S. 531.) The duty of the court to construe and decide remains the same. It must be remembered that the effort here made is to change the obligations which the defendant apparently assumed by the issue to plaintiff of its certificates of stock, and to justify such change by its articles of incorporation, the statutes of the State of New York under which it was created, and the decisions of the courts of that State. There is no suggestion of any peculiar local law in New York independent of that created by these articles and statutes and shown by its decisions, and their effect upon the terms of the contract was a matter for judicial construction by the courts of South Carolina. That the defendant so understood the matter is apparent from the instructions it asked.

The conclusion reached by the courts of South Carolina that the articles of incorporation and by-laws and the statutes of New York did not alter the apparent meaning of the contract was correct. The absolute promise was not so inconsistent with the articles of incorporation or by-laws as to be void. The by-laws at the time of making this contract contained no such provision as appears in *Daley* v. *People's Building &c. Association*, (172 Mass. 533.) There the provision was that "whenever the dues paid and dividends declared shall equal the par value of the shares held by any shareholder, said shares of stock shall be canceled," and the shareholder "shall be entitled to receive . . . the par value of the shares named . . . and no more." Here "all shareholders shall pay or cause to be paid a monthly instalment of seventy-five cents on each share named in their certificate, until the same shall be fully paid." (Article 14, section 14.) But in sections 21 and 22 of the same article are these provisions for a different mode and amount of payment:

"SEC. 21. And it is hereby expressly agreed between all shareholders and this association, that a payment of one hundred dollars per share, named in their certificate, that has been in force till maturity shall be accepted as full payment of all claims on their certificate or against this association.

"SEC. 22. Paid-up and non-assessable stock may be issued and sold at the price of fifty dollars per share, payable on date of issue. Any parties holding such paid-up stock, wanting to withdraw the same before maturity, may do so and receive six per cent annual interest from the date of issue of said stock."

Neither was the promise *ultra vires* the corporation. We are saved from the necessity of an extended discussion of these questions by a recent opinion of the Court of Appeals of New York in the case of *Vought* v. *this defendant, Eastern Building & Loan Association*, decided December 2, 1902,

(65 N. E. Rep. 496.) It is true that the decision was not offered in evidence on the trial of this case in the South Carolina court. It had not then been announced. And it is also true that we do not take judicial notice of the decisions of the courts of one State in a case coming to us from the courts of another. (*Hanley* v. *Donoghue*, 116 U. S. 1, 6; *Chicago & Alton Railroad* v. *Wiggins Ferry Co.*, 119 U. S. 615–622; *Lloyd* v. *Matthews*, 155 U. S. 222, 227.) But nevertheless we may properly refer to the opinion as a construction of the law, and the views therein expressed not only commend themselves to our judgment as intrinsically sound, but also, as the views of the law of New York entertained by the justices of its highest court, have a peculiar and persuasive appropriateness. Referring to the contention that the terms of the articles of incorporation were inconsistent with the absolute promise contained in this certificate that court said:

"In other words, the defendant's contention is that those provisions were sufficient to change an absolute promise to pay into a conditional one, dependent upon the success of its enterprise. We find nothing in these provisions which would justify any such conclusion. The provision in paragraph one, that the plaintiff should pay until the share is paid or withdrawn, is entirely consistent with the agreement for absolute payment for the shares by the defendant at the time named, as by its contract it agreed that the plaintiff's shares should mature at that time."

Again, referring to the contention that the absolute promise contained in such certificate was *ultra vires* the corporation, it observed:

"We deem it unnecessary at this time to determine whether the defendant was authorized by that statute to enter into such contracts, for, if we assume that the making of them was in excess of the express power conferred upon the corporation by that statute, still, as the contracts involved no moral turpitude and did not offend any express statute, they were not illegal in a sense that would prevent the maintenance of an action thereon. It is now well settled that a corporation cannot avail itself of the defense of *ultra vires* when the contract has been, in good faith, fully performed by the other party, and the corporation has had the benefit of the performance and of the contract. As has been said, corporations, like natural persons, have power and capacity to do wrong. They may, in their contracts and dealings, break over the restraints imposed upon them by their charters; and when they do so their exemption from liability cannot be claimed on the mere ground that they have no attributes nor facilities which render it possible for them thus to act. While they have no right to violate their charters, yet they have capacity to do so, and are bound by their acts where a repudiation of them would result in manifest wrong to innocent parties, and especially where the offender alleges its own wrong to avoid a just responsibility. It may be that, while a contract remains unexecuted upon both sides, a corporation is not estopped to say in its defense that it had not the power to make the contract sought to be enforced, yet, when it becomes executed by the other party, it is estopped from asserting its own wrong and cannot be excused from payment upon the plea that the contract was beyond its power. (*Bissell* v. *Mich. So. and*

No. Ind. R. R. Cos., 22 N. Y. 258; *Whitney Arms Co.* v. *Barlow*, 63 N. Y. 62; *Rider Life Raft Co.* v. *Roach*, 97 N. Y. 378; *Holmes, Booth & Haydens* v. *Willard*, 125 N. Y. 75, 80; *City of Buffalo* v. *Balcom*, 134 N. Y. 532; *Bath Gas L. Co.* v. *Claffy*, 151 N. Y. 24; *Moss* v. *Cohen*, 158 N. Y. 240, 249; *Hannon* v. *Siegel-Cooper Co.*, 167 N. Y. 244.)"

We deem it unnecessary to add any observations of our own to these satisfactory declarations of the law of New York.

A single matter remains to be noticed. It is contended that the contract evidenced by the certificates was changed by a loan subsequently obtained by the plaintiff from the defendant upon the security of the shares—a loan obtained after the by-laws had been amended to make, as alleged, more clear the obligations assumed by the issue of share certificates. That amendment is found in section 3, article 8, which as amended reads:

"SEC. 3. Installment stock shall mature and be payable when the dues paid thereon with the profits apportioned and credited thereto shall equal one hundred dollars per share. Paid-up stock shall mature and be payable when the dues thereon with the profits apportioned and credited thereto in excess of any cash dividends, if any, that may be paid, shall equal one hundred dollars per share; and unless otherwise provided all other stock shall be payable as provided by the by-laws or certificates of shares."

But it is not shown that there was any express agreement between the parties to change the terms of the original contract; the amendment was clearly prospective in its operation, (*Knights Templars' & M. L. Indemnity Co.* v. *Jarman*, 187 U. S. 197;) and we are unable to perceive that the mere borrowing or the promise to return the money so borrowed had in themselves any effect upon the prior contract.

We see no error in the record, and the judgment of the Supreme Court of South Carolina is

Affirmed.

Mr. Justice HARLAN and Mr. Justice WHITE concurred in the result.

True copy.

Test:

Clerk Supreme Court, U. S.

1837